







# INDEX

( TO THE )

( FIRST SEVEN VOLUMES )

OF THE

SELECT REPORTS OF REGULAR CASES;

TOGETHER WITH AN

A P P E N D I X,

BEING AN

INDEX TO THE FIRST VOLUME

OF THE

SELECT REPORTS OF SUMMARY CASES

( OF THE )

SUDDER DEWANNY ADAWLUT.

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**Calcutta:**

J. C. SHERRIFF, MILITARY ORPHAN PRESS.

1849.





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*The pages opposite some of the Abstracts for the year 1848, will be found omitted, which Subscribers will have the goodness to fill up from the Reports themselves, which will shortly issue from the Press.*



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# I N D E X

TO THE

## First Seven Volumes of the Select Reports

OF THE

### SUDDER DEWANNY ADAWLUT.

#### P A R T I. G E N E R A L.

#### ABCAREE.

See 'Auction Sales,' No. 11.

#### ABSENTEE.

*Page.*

1. A power of attorney granted by an absentee [a Frenchman resident at Chandernagore, who was shipwrecked near the Island of Saugor], to sue for money due to him, was declared in force,—as provided by the French law in such cases,—until it should be revoked, or the death of the absentee should be established by clear and positive proof, or, in consequence of the presumption arising from his absence, his heirs should obtain an order to put them in possession of his estate. II. *Peron versus J. B. Richemont*, 12th January 1806, .. .. . Vol. I. 122
2. A having borrowed money from B, pledges certain lands to him, and goes on a pilgrimage. After 50 years, during which A is not heard of, his heir sues to recover the land on payment of the amount borrowed. Adjudged on presumption of A's death, and the suit not being barred by the rule of limitations. *Bulraj Rai versus Pertab Rai and others*, 17th March 1812, .. .. . II. 4

See 'Absentee,' Part II. Hindu Law.

'Absentee,'  
'Sales,' No. 2, } Part III. Mahomedan Law.

## ABWAB.

1. A claim by a zemindar against his farmer for a sum of money alleged to have been realized by the latter from the tenantry under the head of *zabita batta*, or the customary levy of an excess of  $\frac{1}{2}$  anna in the rupee, and stipulated to be payable to the zemindar, dismissed as illegal. *Radha Mohun Serma Chowdry versus Gungapershad Chuckerbuttee and others*, 16th December 1843, .. .. . VII. 142  
See 'Assessment,' No. 6.

## ACCEPTORS.

- See 'Bills of Exchange,' No. 2.

## ACCOUNTS.

1. Claim by plaintiff to recover a sum of money due by the defendant on a balance of account, resisted by the defendant, who sets up acquittances in full executed in his favor by the plaintiff. It appearing in evidence that these acquittances were granted conditionally, and that the condition had not been fulfilled, judgment in favor of the plaintiff for the amount proved to be due to him, with interest. *Raja Jye Perkas Singh versus Jograj Sahoo*, 10th September 1811, .. .. . I. 343
2. *Gunga-Jumna*—a mode of keeping accounts, by which the creditor is allowed interest on the original debt till the whole is liquidated, and the debtor interest at the same rate on his several instalments. Note on the case of *Munohur Lal versus Ramnuran Ghose*, .. .. . III. 68
3. In a case of disputed accounts between two European shopkeepers, the Court referred the proceedings to a gentleman skilled in mercantile business, and passed a decree on the basis of his report. *J. Morris versus J. Collis*, 26th November 1821, .. .. . III. 117
4. An action for the recovery of 42,000 rupees, principal and interest, on a *shirakutnameh*, or deed of partnership, in which it was stated that the sum of 21,000 rupees was paid by defendant to plaintiff, but which the plaintiff now asserted he never received. The Court held, under the circumstances, that after the lapse of nearly 12 years from the time of the transaction to the institution of the suit, the plaintiff was not entitled to put the defendant on his proof of the actual payment of the sum, and dismissed the claim *in toto*. *Lala Mitterjeet Singh versus Brij Ruttun Doss*, 19th January 1844, .. .. . VII. 152  
See 'Practice,' 127, 130.

## ACKNOWLEDGMENTS.

1. In a suit for a share of an estate, it appearing that the plaintiff had formerly withdrawn a suit instituted by him for the same property, being induced by a written promise of the defendant to make an amicable surrender of the share sued for; this was considered a virtual admission of the plaintiff's right. *Jadoo Ram Doss versus Obye Ram Doss*, 28th August 1813, .. .. . II. 77
2. A *talook*, originally granted as a dependent tenure, afterwards made independent by a *kharijnameh*, but not actually separated before a public sale of the zemindaree for arrears of revenue, was included in the sale under the provisions of Section 14, Regulation I. of 1801. But the auction purchaser having subsequently acknowledged the right of the *talookdar* to hold distinct from his zemindaree, the separation was adjudged notwithstanding the objections of a second purchaser of the zemindaree by private sale from the first purchaser. *Huree Nurain Rai versus Raj Inder Rai*, 7th December 1813, .. .. . II. 97

3. Claim to possession of certain villages under an *ikrarnamoh*, or written acknowledgment, from a conditional purchaser, under *bye-bil-wufa*, alleged to have been executed 9 years after the sale had become absolute: claim rejected, the agreement not being proved, and though proved, being either without consideration, or the condition violated by the claimant. *Gopal Lal versus Raja Torul Nuran Singh*, 25th September 1826, IV. 182

4. A and B file a suit in the zillah court against C and D, for the recovery of certain out-standing balances, which is dismissed with costs. On appeal to the provincial court, C acknowledges and liquidates his share of the balance sued; but the provincial court confirms the decree of the zillah judge, holding that the acknowledgment given by C cannot be looked upon as proof of liability on the part of D. On special appeal by A and B, the Sudder Dewanny Adawlut affirmed the decrees already passed. *Lala Gopal Nurain and another versus Ajooba Singh*, 11th August 1835, . VI. 38

5. Admission by one defendant is no valid reason for exonerating co-defendants from a claim established against them by evidence. *Tarachand Desmookho versus Rumonce Dasse* and others, 14th June 1847. . VII. 339

See 'Acknowledgments,' *passim*, }  
 „ 'Marriage,' No. 9, } Part III. Mahomedan Law.  
 „ 'Parentage,' Nos. 1, 2, }

## ACQUISITIONS.

See 'Acquisitions,' *passim*, Part II. Hindu Law.

## ACQUITTANCES.

See 'Accounts,' No. 1.  
 „ 'Banking Houses,' No. 2.

## ACT OF PARLIAMENT.

1 Held, that the provisions of an Act of Parliament come into operation from the date only on which the Regulation having reference to it is promulgated. *Mr. D'Souza versus Lt. Wroughton*, 23d February 1827. . . . . IV. 225

## ACTIONS.

1. Suit for lands to which defendant pleads a title under a deed of composition for homicide, and other instruments; the Sudder Dewanny Adawlut maintain his title. *Nunda Singh versus Meer Jafir Shah*, 10th April 1794. . . . . I. 4

2. Claim for a sum of money, alleged to have been embezzled by the ancestor of the respondent from the ancestor of the appellant, dismissed; the alleged embezzlement being disproved. *Ooditnuran Singh versus Casimath and others*, 24th April 1807, . . . . . I. 183

3. Claim by appellant to certain lands in possession of the respondent, as claimant's hereditary property. On proof shewing the title of the claimant's father, and of the claimant as heir, lands adjudged with mesne profits from a certain date. *Imaum Buksh Khan versus Nuwab Dilawur Jung*, 22d June 1807, . . . . . I. 190

4. In a suit to recover 10,000 rupees as damages for the loss of manna appertaining to the plaintiff, which perished from the effect of damp in consequence of being forcibly detained in the warehouse of the defendant; no illegal detention, or want of care, being proved, the suit was dismissed in all the courts. *Meer Nizamooddeen versus Ramjee Mull*, 5th April 1810, . . . . . I. 300

5. Appellant's claim to a moiety of an estate adjudged on proof that it was the joint inheritance of the parties, though a mortgage debt contracted under the management of the respondent's father was paid by the respondent. Appellant's claim not precluded from cognisance by incidental judgment against him in another suit. *Sheikh Bhekarce versus Emaum Buksh*, 5th November 1811, . . . . . I 355

6. A [the owner of a ship] drew a bill of exchange in favor of his agents and creditors on B, [the freighter,] payable on the discharge of the ship on her return to port. The obligation was voided by the loss of the ship: but the house of agency, in whose favor the bill was drawn, had insured freight equal to its amount. In a suit by A against B for the recovery of freight, which accrued while the ship was in the employ of B, held that B cannot plead as part payment the sum received by the creditors of A. on account of the insurance policy. *F. H. Hinch versus C. Sonningsen*, 20th June 1812, . . . . . II. 15

7. A, an indigo planter, makes advances to cultivators, on engagements to deliver the whole of the indigo plant produced. B, another planter, seizes the crops of the said cultivators, and is sued by A for damages. Determined that the action of A against B, will not lie; that A may sue the cultivators for breach of engagement, and that the cultivators have their remedy against B. *Francis Rouse versus Alexander Haig and others*, 26th June 1813, . . . . . II. 69

8. In a suit brought by a person against another for certain lands, under a deed of gift alleged to have been executed in his favor by the proprietor, it is only necessary to enquire into the title of the claimant; and should it incidentally appear that neither party has a right to the property, still the rightful heirs must institute a regular suit to recover it. *Raja Chutter Singh versus Shah Mahomed Ali*, 5th April 1816, . . . . . II. 178

9. A having by mistake sold to B a promissory note for 2,000 rupees, instead of one for 500 rupees, sued him to recover the difference between the two notes. B having sold the note to C, his agent, pleads ignorance of the mistake. It being proved that A had no dealings with C, judgment given against B, leaving him the option of suing C for the recovery of the difference. *Gour Sirdar versus Gopee Dutt*, 30th November 1818, . . . . . II. 281

10. Held that a claim against a party in possession of certain alluvial lands, and a claim against the *ameen* for profits realized while the lands were under attachment by him, may be preferred in the same action. *Ram Kishen Rai and another versus Gopee Mohun Baboo*, 26th April 1824, . . III. 340

11. Action to recover profits of a partnership, in trade, entered into without any written agreement: decree in favor of plaintiff on proof of partnership. According to Hindu law, although it is unlawful for *Bramins* to traffic in wine, yet, on closing their accounts, they are entitled to their respective shares of the profits of such traffic. *Jye Nuran Mookerjee versus Bul Ram Rai*, 15th July 1825, . . . . . IV. 84

12. Claim to certain lands dismissed; it appearing from the evidence adduced that the property was obtained by a *furzee* grant by the defendant's ancestor in the name of the ancestors of the plaintiffs. *Musst. Hyatun and another versus Mahomed Hussun Khan*, 3d April 1826, . . IV. 134

13. Punishment for a misdemeanor (as for instance desertion from a ship with a boat) does not bar the civil remedy of the owner; and those concerned in the act are jointly and severally liable. *Jewun Serang versus R. B. Paine*, 6th January 1830, . . . . . V. 1

14. Interest, and damages under special covenant, which a plaintiff omitted to include in a former action in which he recovered principal, recoverable in a special action, on proof of being due. *Burkut-o-nissa Begum and another versus Commercial Resident of Patna*, 19th April 1831, . . . . . V. 115

15. A sued B and C for a real estate, on alleged breach of covenant by B, and defect of C's title, which defect had been recognized by B; but during B's life, A could have no right to enter. B died during litigation, and the Sudder Dewanny Adawlut adjudged to A part of the interest of B, which had superveniently become vested in A, notwithstanding defect of any immediate right at the time of claim. Baboo Sheo Munoj Singh *versus* Baboo Ram Perkas Singh, 25th September 1831, .. V. 145

16. Where B and C impugned, as illegal, a gift by A to D made several years before his death, it was held that on A's death, B and C might recover, by suit, the object of such illegal gift, their right then accruing: provided there was not adverse possession in A's lifetime, nor waiver of claim on part of B and C by previous omission to sue. Jewun Lal Singh and others *versus* Ram Govind Singh and another, 24th January 1832, V. 163

17. A, the widow of B, a Mussulman, repelled the action of C, his brother, for a share of an ancestral estate, by pleading the result of an action by their father, whereby his claim to a share therein had been dismissed. Plea over-ruled; the father's hereditary right having been recognized in a subsequent scheme of distribution among the co-heirs, and B and C, as such, having by joint payment saved the estate from sale for arrears of public revenue, thereby acquiring the interests of other co-sharers who abandoned. Musst. Khutee Jan *versus* Anwur Khan and others, 5th April 1832, .. V. 184

18. A sued B for an estate on a general title resting on disputed points of law and fact, and recovered in the zillah court by a decree from which B did not appeal. The subsequent action of A, against B and his vendee C, for another estate on the same title, is dismissed by the Sudder Dewanny Adawlut, who found the issues differently. It was held that the first decision was not binding on C because he was not a party thereto, and because the suit was for a different estate. Bundhu Ram *versus* Sunker Dutt 19th June 1832, .. V. 216

19. In an action between A and B, the issue was whether a parcel of land claimed by A was his assessed tenure, recorded on the rent-roll of a Government *mehal*, or a component part of the assessed estate of the defendant B. Judgment in the last resort went in favor of B. About 7 years after, A sued B and Government to recover back principal of, and interest on the assessment for 14 years which he had paid Government for the said land. By judgment in appeal A recovers principal from Government alone, because by judgment in the prior suit it was established that Government had received double rent for the same land; although Government was not a party in that prior suit. Collector of Chittagong *versus* Krishen Kishwur 30th September 1833, .. V. 331

20. A sells an estate to B, which B sells to C, the name of A still remaining recorded as proprietor in the collector's office. The estate is sold for arrears of public revenue, and the surplus proceeds are alleged to have been paid by the collector to A, the recorded proprietor. On an action by C against A and B for the recovery of the amount of surplus, the zillah judge gave a decree against B, without going into the question of the payment alleged to have been made by the collector to A, leaving B to sue A for the amount. On appeal, the Sudder Dewanny Adawlut reversed the judgment, exonerated B from liability, and directed investigation of the claim against A. Beebee Nancy Diram *versus* John Mackay, 25th February 1836, VI. 55

21. The plaintiff sued for the recovery of a specific sum of money, conditionally agreed to be paid by a party to an appeal to the Privy Council to a house of agency in Calcutta, for their trouble and expenses in carrying on the appeal; the condition being that the sum should be paid if the party was successful. Judgment in favor of the plaintiff, on proof of the fulfilment of the conditions. An objection raised by the defendant, that the assignment of the conditional order by the house of agency to the present plaintiff, was

unauthorized and illegal, over-ruled as invalid. *Rajah Bejai Govind Singh and others versus John Fullarton*, 27th February 1838, . . . . VI. 222

22. An action by a zemindar for the assessment of certain lands within his estate, was finally decided, after litigation for a number of years, by an adjustment of the rent at a rate of a little more than a third of the amount claimed by him. In a second action, for the recovery of the rent for the period during which the suit was pending in court, at the rate fixed by judicial award, together with interest on the same, the Sudder Dewanny Adawlut awarded the principal, but no interest for the period antecedent to the adjustment; it not appearing that the plaintiff had ever consented, prior to the adjustment, to receive any smaller sum than his original exorbitant demand. *Pedro D'Sylva versus Dr. Clementi*, 26th June 1838, . . VI. 232

23. Property having been decreed may become the subject of a fresh suit between members of the successful party, for the adjustment of their respective shares in it. *Nadir-o-nissa versus Pran Koonwur Birmunnee and others*, 16th May 1845, . . . . . VII. 207

24. Claim by inheritance dismissed under Circular, No. 29, dated 11th January 1839, being for property which should have been included in a previous suit. *Rae Hurrec Kishen versus Rajah Putnee Mul*, 18th Jan. 1847, VII. 287

25. The estimate in money of a suit simply for re-admission to caste is not an action to recover the amount at which it is laid. An order of nonsuit by the lower court, failing to draw the distinction between them, over-ruled by the Sudder Dewanny Adawlut. *Sonaram Gazor versus Obhyram Gazor and others*, 13th April 1847, . . . . . VII. 288

26. Costs allowed to a party unnecessarily made a defendant, in a case subsequently compromised between plaintiff and the other defendants. *Radha Govind Mitr versus Bhyrub Chundur Singh*, 27th April 1847, . . . VII. 289

27. Suit for a portion of claim being opposed to Circular Order, dated 11th January 1839, remanded to admit a supplementary plaint; the petition of plaint having being filed before issue of the Circular. *Musst. Sogra Khatoon versus Abdool Ali and another*, 16th June 1847, . . . . VII. 344

28. A case was remanded because no notice had been taken of defendant's plea of adverse possession of the lands for 20 years. *Sunker Race and others versus Surbjeet Race and others*, 24th June 1847, . . . VII. 349

29. A claim having been divided contrary to paragraph 1, Circular Order 11th January 1839, the judgments given were reversed in consequence. *Radha Benode Misr versus Sheikh Musheetoollah and others*, 3rd July 1847, VII. 350

30. Held that the ground of action being one, a suit can be entertained, notwithstanding that distinct claims be set up by different defendants: in other words, the validity of a plaint is not affected by the number of issues in defence. *Musst. Oma Chowdrain and another versus Musst. Indurmunee Chowdrain and another*, 15th July 1847, . . . . VII. 354

31. Claims by two individuals for arrears of rent, each holding under separate farming engagements distinct portions of land in the same village, being preferred in one suit: order of nonsuit as they should have sued separately. *Chedee Singh versus Hoonooman Singh and another*, 12th Aug. 1847, VII. 381

32. In a case of debt on bond, the parties acquiring a right by inheritance thereto entered separate actions to recover the *quota* each was entitled to: held that this was not a splitting of the cause of action, prohibited by C. O. No. 29, 11th January 1839. *Mohunt Mudoosoodun Dass versus Goverdhun Dass*, 18th September 1847, . . . . VII. 392

33. Failure to bring a summary action to contest a demand of rent, does not bar the plaintiff from his remedy by a regular action. *Sheikh Bundhoo versus Gourcepurshad and others*, 7th March 1848, . . . VII. 414

34. Distinct shareholders, according to private partition, within estates which are publicly joint and undivided, may sue for rent separately. *Ram-narain Dutt and another versus Sooroo Chunder Bose and others*, 8th April 1848, . . . . VII. 483

35. An action will not lie against the magisterial authorities for recovery of a ferry, of which possession has been taken by them under Regulation VI., 1819. Government *versus* Brijsoondree Dassee and another, 18th May 1848, .. .. VII.

See 'Set off,' No. 1.  
 'Issue,' No. 1.  
 'ChamPERTY,' No. 1.  
 'Acknowledgment,' No. 1.  
 'Rent-free lands,' No. 1.  
 'Practice,' Nos. 1, 3.

36. Circular Order of the Nizamut Adawlut dated 10th December 1830, is no bar to the institution of a suit for the removal of a *haut*. Kumul Lochun Ghose and others *versus* Bhagirruttee Dibbea, 5th February, 1848, .. VII. 432

## ADJUSTMENT.

A suit for property, real and personal, in right of inheritance, having been adjusted between the parties: held that such adjustment does not bar an action by the same plaintiff against the same defendants, for his share of ancestral property alleged to have been fraudulently concealed by the latter at the time of the adjustment. Casheemath Mookerjee *versus* Prawn-kishen Mookerjee and others, 14th September 1843, .... VII. 131

## ADMINISTRATOR.

See 'Advocate General,' No. 4.  
 'Sales,' No. 10.

## ADOPTION.

See 'Adoption,' Part II. Hindu Law.

## ADVOCATE GENERAL.

1. A, a British subject, acquired land: B his son, also a British subject, succeeded thereto. On his death his estate, by English law, will descend to his heirs; his wife will be entitled to dower. No relation of his mother, nor even of his wife, will succeed thereto as his heir; and in default of his heirs, it will be escheated, subject only to his wife's dower. Joanna Fernandez *versus* Domingo DeSilva and another, 12th February 1817, .... II. 227

2. 'I am of opinion that the proper remedy as to obtaining possession of the estate mortgaged by Zumeeroodeen Moonshee, is by a suit in the *Mofussil* court by the mortgagee [*quare add*, 'against the mortgager'] who cannot have any defence, the equity of redemption having been foreclosed in the Supreme Court. Zumeeroodeen not being subject to the jurisdiction of the Supreme Court, an ejectment cannot be brought against him in that Court, which obliges the mortgagee to resort to the *Mofussil* court.' Zumeeroodeen and another *versus* Ram Mohun Mullik, 19th September 1821, . . III. 112 Note.

3. Opinion of the Advocate General as to the sufficiency of certain deeds executed between the parties to protect the property from execution of other parties suing out execution in the Supreme Court or other court. J. Morris *versus* J. Collis, 26th November 1821, .. .... III. 117

4. A sale made by an administratrix of the real estate of an intestate is not valid in English law, and the son is entitled to recover possession, subject to a refund to the purchaser of such portion of the purchase money as may be proved to have been expended for the benefit of the heir at law. T. Hoo *versus* P. Marquis, 10th July 1827, .. .... IV. 243

## AFFRAY.

See 'Confiscation,' No. 3.

## AGENTS.

1. A *bye-bil-wufa* sale of land, by an agent on the part of the owner, declared void in Mahomedan law from the agent having exceeded his powers,—from the sale being at gross inadequacy of price,—and from presumption



- of collusion between the buyer and agent. *Meer Alecmullah versus Alif Khan*, 30th September 1801, . . . . . I. 55
2. An engagement having been written without the knowledge and consent of a female, on a signed blank, entrusted by her to her agents for another purpose, pronounced to be an invalid instrument. *Wujeh-o-nissa Klahum versus Roshunara Khanum*, 30th October 1805, . . . . . I. 110
3. Claim to possession of lands by A, as having been purchased by B as her agent, with her money and on her behalf, decreed on proof of the fact. *Pudum Nath Rai versus Ranees Judesree*, 2nd May 1806, . . . . . I. 132
4. Two persons, by profession agents and brokers, made responsible for the articles sold by them on credit to a person who had become insolvent. Judgment founded on presumptive proof of their having made themselves responsible, chiefly arising from their having charged a rate of commission at which responsibility is usually and ought to have been undertaken. *Shakir Jan and another versus Ahmudoollah*, 1st August 1806, . . . . . I. 149
5. Claim by A on B, for lands bought at public sale by the late husband of B, on the alleged ground that he bought them as agent on the part of A. This not being established, and it appearing from presumptive proof that the purchase was made by the husband of B on his own account, judgment passed dismissing the claim. *Sumboonath versus Alukmuncce*, 12th April 1808, I. 231
6. A *pottah* set aside on proof that it was obtained from the agent of a *jageerdar* without his consent. *Mahomed Reazooddeen versus Acbur Ali Khan*, 13th June 1808, . . . . . I. 238
7. A sues B for lands, alleging that he purchased them at auction through the agency of B, in B's name; that a conveyance was afterwards executed to him by B, but that B had since fraudulently denied his title, and retained the property. The alleged conveyance not being established, judgment was passed dismissing the suit: it being held that there was no other ground on which to sustain it, because, even supposing the plaintiff to have been the real purchaser at auction in the name of the defendant, such purchase being expressly prohibited by the regulations, could not form a legal ground of action, or authorize the courts to interfere on his behalf. *Ram Manic Modce versus Jynurain*, 21st September 1809, . . . . . I. 289
8. Since the enactment of Regulation VII. 1799, the courts can give no remedy against a fraudulent agent, employed to purchase lands at a collector's sale, in his own name, in an action for possession; but may cause him to refund the amount received in an action for debt. Yet, on proof of a conveyance subsequently executed by such agent to the real purchaser, the Court will cause performance, without enquiring too minutely into the grounds of the transaction. *Ram Manic Modce versus Jynurain*, 21st September 1809, I. 292 Note.
9. A mortgage, or conditional sale, by an agent set aside; it appearing that he had no special powers from the proprietor for that purpose, the consideration being inadequate, and the execution of the deed irregular. But the mortgage money was ordered to be refunded with interest. *Goluk-nath Rai and another versus Mikraj*, 17th March 1812, . . . . . II. 6
10. Judgment in a suit brought on behalf of appellants by one not duly authorized on their behalf, held not to bar appellants' right of action. *Raja Kashcenath Rai and others versus Nuwab Dilawur Jung*, 12th May 1812, II. 14
11. At the formation of a triennial settlement for the conquered provinces, in 1210 F. S., A stood forward as the proprietor of an estate; and, entering into engagements with Government, held possession for that period. B, the real proprietor, then appeared; and, entering into engagements for the estate, sued A to recover the profits received by him; alleging that he had acted on her behalf in making the settlement for the lands, and under agreement to leave B in possession of her proprietary right and profits; but had fraudulently applied them to his own use. Claim dismissed, no written or other specific engagement between the parties being adduced by the plaintiff. *Ranees Bhudoorun versus Ifemunchul Singh*, 15th May 1813, II. 59

12. A purchases his own lands, which were set up to auction for arrears of public revenue, by employing a dependent to bid for them. This dependent, by authority of A, alienated them to B by a deed of *bye-bil-wufo*, or mortgage and conditional sale, which sale became absolute. A afterwards brings a suit to set aside that sale, on the plea that B had exacted usurious interest on the mortgage money. But the original auction purchase by A having been in direct violation of the Regulations, and A having received for the lands more than he gave for them, even admitting a deduction for the alleged usurious interest, the Court did not deem it necessary to investigate the truth of this allegation, and rejected the claim of A. *Raja Bishennath Rai versus Kureemoolla Chowdry and another*, 21st July 1813, .... II. 71
13. A judgment given against a dependent of a landed proprietor, who had taken a farm of his land by the desire of the proprietor, held not to be conclusive against the latter, as the suit was not defended under his directions, or with his authority. *Konwur Inderjeet Chowdry versus Radha Kishen*, 7th February 1817, .. .. II. 223
14. A *mocurruree pottah*, or lease at a fixed rent, granted by one of the heirs of a deceased *altumghadar* acting as *mokhtar* [or managing agent] for the rest of the heirs, set aside; it appearing to have been granted without their knowledge and concurrence, and without being specially empowered by them to grant such *pottah*. *Ameer Buksh and others versus Mahomed Mustuquem Khan and others*, 27th February 1817, .... II. 230
15. The Sudder Dewanny Adawlut will dismiss a claim to lands, the purchase of which is avowed to be made in the name of another, with the claimant's money; but the purchase money recoverable by a new suit. *Delaram and others versus Roop Chund Sahoo*, 18th April 1820, .... III. 24
16. Held that the rule against taking cognizance of claims to lands purchased in fictitious names applies not only to the parties engaged in the illegal transaction, but also to their heirs and others when the illegal transaction forms the foundation of the claim. *Gourchunder Rai and others versus Hurrischunder Rai and others*, 28th December 1826, .... IV. 188
17. The principals in a trading concern were bound by the acts of their agents, though no written authority had been granted by the former formally accrediting the latter to the parties with whom they traded, in consequence of strong evidence connecting the principals and agents. *Gourchunder versus Hoolassee Shah and others*, 27th April 1848, .... VII.

# ALIENATION.

See 'Alienation,' Part II. Hindu Law.

'Alienation,' Part III. Mahomedan Law.

# ALLUVION.

1. On a claim to certain newly formed alluvial lands, the lands were adjudged on proof that they had gradually been annexed by alluvion to the claimant's estate. *Ishur Chunder Rai and others versus Ram Chund Mokerjee*, 11th December 1807, .. .. I. 221
2. The deserted bed, a public river, which ran between two properties, declared divisible between the two proprietors in the circumstances of the case, in compensation for the loss sustained by them from excavation of a new channel. *Ishur Chunder Rai and others versus Ram Chund Mokerjee*, 11th December 1807, .. .. I. 221
3. In a suit for alluvial land, which had accumulated on the estate of the plaintiff by the gradual recession of a river which formed the boundary, and was afterwards severed from the plaintiff's estate and left united to that of the defendant by a sudden return of the river to its former course; the Sudder Dewanny Adawlut disallowed the claim of the plaintiff. *Raja Grees Chunder versus Raja Tej Chunder*, 8th May 1809, ... I. 274

4. Had the river by a sudden change of its course, intersected the old lands of the plaintiff's zemindaree, leaving each bank capable of being identified as the estate of the plaintiff, the general law of alluvion in India, as well as in Europe, would not have entitled the defendant to the land situate between the new and the old channel of the river; and the local usage with respect *Shikust Pywust* [literally 'broken and joined'] or alluvial land, properly so called, viz., that the river flowing between two estates should form their mutual boundary, would not have availed the defendant, as constituting a title to land not gained by alluvion. It may be added that in the common case of alluvion, or increment by the recess of a river or the sea, the Indian law and usage correspond with those of England and with the civil law. What is gained by gradual accretion is the property of him to whose estate the recess of the river or sea has annexed it. What is lost by a gradual encroachment of a river or the sea is a loss, without reparation, to the owner whose estate is thus destroyed. *Raja Grees Chunder versus Rajah Tej Chunder*, 8th May 1809, .... I. 276 Note.

5. Plaintiffs and defendant being zemindars of two estates separated by a river, and the river having gradually carried away lands from the defendant's side and left lands annexed to the estate of the plaintiffs; such lands, as having been gradually annexed by retirement of the river, adjudged to be the lawful accretion to the plaintiffs' estate. *Radha Mohun Rai and other versus Sooruj Nurain Banerjee*, 29th April 1811, .... I. 319

6. Claim to alluvial lands. The river Burumpooter flowing on each side of the land claimed, it was divided among the parties whose estates lay on either side of the river. *Koowur Huri Nath Rai versus Musst. Jyc Doorga Burwain*, 9th September 1818, .... II. 269

7. Claim to certain lands alleged to have been washed away by the stream from the plaintiffs' estate. Judgment given in favor of the defendants, to whose estate they had become gradually annexed, without any proof of their allegation that those lands were formerly their property and had been recovered by the recession of the river. *Zeboonissa and others versus Pursun Rai and others*, 1st March 1824, .... III. 316

8. Held that a claim against a party in possession of alluvial land, and a claim against an *ameen* to the profits realized while the lands were under attachment by him, may be preferred in the same action. *Ram Kishen Rai and another versus Gopee Mohun Baboo*, 26th April 1824, .... III. 340

#### ALTUMGHIA.

See 'Rent-free Tenures,' No. 12.

#### AMOUNT OF ACTION.

1. In a suit for possession of lands and mesne profits during dispossession, it is not necessary that the annual produce and profits during dispossession should each exceed the sum of 5,000 rupees, to make the suit originally cognizable in the provincial court; but only that the aggregate of both should exceed that sum. *Nub Kishore Buhnhooria versus Hyder Buksh*, 30th August 1814, .... II. 125

2. According to the spirit of Sections 2 and 3, Regulation XIII. 1808, when a person brings a suit for land or other immovable property, and also for money or other movable property, the aggregate amount of both descriptions of property is to be considered as the cause of action. *Ibid*, .... II. 125

#### ANCESTRAL PROPERTY.

See 'Ancestral Property,' Part II. Hindu Law.

## ANNUITY.

1. An annuity granted by the zemindar of Nuddea to his younger sons, on a devise of the zemindaree to his eldest son, and made payable from the *moshahira*, or proprietary allowance received from Government while the zemindaree was under the management of the public officers, adjudged to be demandable from the possessor of the zemindaree, who, without the consent of the annuitants, relinquished the *moshahira*, and took on himself the management of the zemindaree with the consequent responsibility for the revenue assessed upon it. The annuity not liable to reduction on account of the public sale of parts of the zemindaree under such circumstances; and as the right of the annuitants had been twice adjudged, and appeals were preferred merely to protract the period of payment, the zillah court was ordered to enforce the punctual payment of the annuity in future, by a sale of lands if necessary. *Raja Grees Chunder Rai versus Sumbhoo Chunder Rai*, 9th May 1805, . . . . . I. 133
2. A has an annuity payable out of B's estate. In a dispute respecting the rate, B enters into an engagement to pay A the same sum annually as may be decreed by the court to other annuitants under similar circumstances; engagement held to be binding on B from the date of execution, but not to have reference to previous balances; the engagement not containing any retrospective provision. *Rajah Grees Chunder Rai versus Omesh Chunder Rai and others*, 26th May 1813, . . . . . II. 62
3. A judicial order for the payment of a monthly stipend to a certain individual, is not held to entitle his heirs to claim it after his death. *Tobfa Dibeh versus Pirthee Chund Rai*, 20th January 1822, . . . . . III. 134
4. The gift of an annuity, made by a zemindar during his lifetime to a younger son, in lieu of his share of a zemindaree, held to be hereditary. *Rajah Grees Chunder Rai versus Omesh Chunder Rai*, 29th January 1829, . . . . . IV. 328
5. An undertaking to pay a creditor and assignee of an annuitant, a portion of his pension, imports no liability beyond the life of the annuitant. *Mohunt Gungot Gir versus Chhem Karan Kumari and others*, 14th June 1830, . . . . . V. 35

## ANUMUTIPUTR.

See 'Anumutiputr,' Part II. Hindu Law.

## APOSTACY.

See 'Apostacy,' Part II. Hindu Law.  
Part III. Mahomedan Law.

## APPEALS.

- Appeals. From Nonsuit or Dismissal on Default. See Nos. 5, 7, 8, 14, 16, 19.  
 .. Interest during. See 'Appeals,' Nos. 5, 8, 9, 10, 18, 21, 22, 23, 29.  
 .. Miscellaneous. See Nos. 1, 11, 12, 20, 22, 24, 29.  
 .. Pauper, Nos. 18, 21, 25.  
 .. Special, Nos. 3, 4, 10, 13, 18, 23, 25, 26, 27, 28, 30, 32.  
 .. Summary, Nos. 2, 5, 6, 15, 17.

1 The Court of Sudder Dewanny Adawlut will receive fresh evidence in appeal, on clear and unquestionable proof that it was not discovered

until after the decree of the provincial court. Nub Kishen Sein *versus* Kishen Mohun Sem, 1st September 1806, . . . . . I. 159

2. An appeal will not lie, except on special grounds, from a summary decision passed under Regulation VII. 1799. Raja Raj Kishen *versus* Ram Nurain, 10th August 1807, . . . . . I. 208

Hurce Mohun Thakoor *versus* Ram Nurain Deo, 12th September 1808, . . . . . I. 255

3. In appeal to the Sudder Dewanny Adawlut against a decision of the provincial court under Section 8, Regulation II. 1801, [or Section 3, Regulation XXVI. 1814.] it appearing that the zillah judge had dismissed on default an appeal from the decision of the register, and that the provincial court, after hearing both parties for and against the dismissal, had approved and confirmed it, the Court of Sudder Dewanny Adawlut did not consider a further appeal within the intent of the Section and Regulation quoted. Ram Pershad Lushker and another *versus* Ram Soonder Ghose, 30th January 1809, . . . . . I. 269

4. In special appeals, the Court of Sudder Dewanny Adawlut do not consider themselves bound to decide more than the point on which the appeal was admitted. Kala Chund Chukerbutty *versus* Jogul Chukerbutty, 2d June 1809, . . . . . I. 279

5. Appeal from nonsuit, on the ground of former judgment, in a suit brought on behalf of appellants by one not duly authorized on their part, admitted as summary. Rajah Kasheemath Rai and others *versus* Nuwab Dilawur Jung, 12th May 1812, . . . . . II. 11

6. A decree having been given against the appellant in the zillah court by a summary decision, passed under the provisions of Regulation XLIX. 1793, the appellant petitioned the provincial court to admit an appeal from that decision, on the ground that the Regulation mentioned was not relevant to the case. His petition was rejected; but the Sudder Dewanny Adawlut held that an appeal should be admitted for the purpose of investigating the appellant's objections. Lukhun Manek Rai *versus* Musst. Rooknee, 10th September 1812, . . . . . II. 39

7. Where a notice has not been served on an appellant, as required by the concluding part of Section 12, Regulation V. 1793, [Clause 7, Section 12, Regulation IV. 1803,] delay on his part in filing his pleas of appeal is not a sufficient ground for dismissing his suit. Oodwunt Rawut *versus* Auluk Rai, 23d September 1812, . . . . . II. 10

8. Even after the above notice has been issued, the appellant, prior to the dismissal of the appeal, should be called upon to shew cause why the suit had not been proceeded on during the prescribed period of six weeks. Shewue Pal *versus* Juggobundhoo, 23d September 1812, . . . . . II. 11

9. A mortgage declared valid by a former judgment of the zillah court, from which no appeal was preferred, found to be illegal in a subsequent suit for redemption of the mortgaged property: but not set aside on that account by the Sudder Dewanny Adawlut: the former judgment being still in force and only voidable on review, or appeal. But judgment passed for redemption on liquidation of the debt. Juggut Chunder Sem and another *versus* Kishwanund and others, 12th September 1814, . . . . . II. 126

10. According to the provisions of Regulation XXVI. 1814, a special appeal cannot be granted from a decision on the ground of its awarding to an auction purchaser possession of certain lands, which lands not being specified among the auction papers and in the plaint under the denomination given them in the decree, are apparently different from those claimed: but this is a sufficient ground for recommending a review. Sham Beebee and others *versus* Sunagolla, 4th April 1816, . . . . . II. 176

11. In an action for possession of an estate, mortgaged under a deed of *bye-bil-wafa*, or conditional sale, the period of its redemption having expired, a decree was obtained in the zillah court. Two years after, (the estate having in the mean time been sold by public auction) an appeal being preferred to the provincial court, the zillah decree, from its not being in conformity to the rules of Regulation XVII. 1806, was reversed. The Sudder Dewanny Adawlut held the sale to have become absolute, considering the omission of the mortgager to prefer an appeal in due time, and to stay the intermediate sale of the estate, as a sufficient bar to his right of redemption. Paddun Chuan Mohapater and others *versus* Ramlal Pandey and others, 19th November 1816, . . . . . II. 200

12. On the admission of a special appeal against a judgment of the provincial court, for certain lands in favor of A against B, a claim is set up by C, as a third party, founded in the absence of all original right on either side: the Court did not judge it necessary to enter into the further claim, but contenting itself with deciding between the former parties, left C the option of proceeding by a regular suit. Government and others *versus* Baenssur Nag and others, 30th December 1816, . . . . . II. 219

13. The appellants were adjudged by the provincial court to pay a debt borrowed by their brother, on the ground of the family being undivided, and the money borrowed being applied to the benefit of the family generally; but the decree, at the same time, allowed them to sue for the recovery of the sum so adjudged from the estate of their brother. A special appeal was admitted against this part of the decree, as inconsistent; and so much of the decree as gave the option was annulled by the Sudder Dewanny Adawlut. Nab Coomar Chowdry and another *versus* Jye Deo Nundee and others, 11th August 1817, . . . . . II. 247

14. The provincial court having nonsuited the appellants for having sued for a part only of their claim, the Sudder Dewanny Adawlut allowed a summary appeal from the decision, and directed the provincial court to re-admit the suit, and allow the appellants to pay the institution fee on the remainder of their claim, and to amend their plaint according to Section 1, Regulation IV. 1793. Neel Kunt Ghose and another *versus* Sassee Munnee Dossea, 9th April 1819, . . . . . II. 293

15. The provincial court having rejected a petition of appeal on the ground of the period allowed for appealing having elapsed, without enquiring into the pleas explanatory of the delay, the Sudder Dewanny Adawlut, on a summary appeal, ordered that court to enquire into the truth of the statement of the appellant previously to rejecting the appeal. Musst. Nund Koor Beebee *versus* Bheer Kishore Mhytee, 7th May 1819, . . . . . II. 298

16. The provincial court dismissed on default an appeal, because the appellants had failed to file a reply to respondent's answer. The Sudder Dewanny Adawlut considering the reply unnecessary under the spirit of Section 9, Regulation XXVI. 1811, although the appeal was admitted before the date fixed for the operation of that Section, ordered the provincial court to re-admit the appeal, and try it on its merits. Ajcet Singh and others *versus* Hurlal Singh and others, 16th July 1819, . . . . . II. 306

17. The proprietary right having been formally investigated and decided upon in a summary suit by the register, whose decision, on a regular appeal having been erroneously admitted, was reversed by the provincial court; the Sudder Dewanny Adawlut, in a summary appeal, did not think fit to touch the reversal, but specially directed that the party in possession before the dispute should not be disturbed. Luchmun Doss *versus* Roop Chand and others, 6th January 1820, . . . . . III. 3

18. Held that a special appeal could not be admitted *in forma pauperis* in a suit instituted after the 1st February 1815. [But a subsequent

enactment Section 5, Regulation II. 1825, has authorized special appeals *in forma pauperis*.] *Munsa Ram versus Jowahir Pandeh and others*, 16th September 1822, . . . . . III. 172

*Jai Ram Dhamee versus Musan Dhamee*, 14th January 1830, . . . . . V. 5

19. A plaintiff being nonsuited on the ground that she had sued for a part instead of the whole sum due to her from the defendant; and having subsequently instituted a new suit for the whole debt, which was awarded to her, the defendant appealed to the Sudder Dewanny Adawlut, who reversed the nonsuit, and ordered that the original suit should be re-tried on its merits. Judgment being again given for the plaintiff, the Sudder Dewanny Adawlut awarded payment of the whole debt, evidence of its being due having been furnished, and there being no irregularity in preferring the claim. *Ram Churn Lal versus Musst. Tej Koonwur*, 21st April 1824, . . . . . III. 337

20. Where a judgment is given against two persons jointly, one of them is not competent to appeal severally for the reversal of half the decree, nor can half a judgment be appealed from when given against one individual. *Roshun Khatoon versus Jan Khatoon*, 10th November 1824, . . . . . III. 414

21. The provincial court having refused to admit an appeal *in forma pauperis* on the merits of the case; and, without reference to the question of pauperism, held that such order is final, and not open to special appeal. *Sud Kulunder Ali versus Dhomun Beebee and others*, 16th January 1826, . . IV. 105

22. Where the judgment of the lower court is expressly affirmed in appeal, any inconsistent words, subjoined to the decretal order of the appellate court, should be treated as surplusage, benefitting or prejudicing neither party. *Dharan Nurain Ghose and others versus Ladlee Mohun Thakoor and another*, 30th August 1830, . . . . . V. 62

23. The Sudder Dewanny Adawlut admitted a special appeal, perceiving reason to doubt the accurate finding of a fact operating a legal forfeiture: but decided that the case should not be held as a precedent. *Srnath Mulic versus Abhai Churn Nundee and others*, 20th December 1830, . . V. 79

24. The appeal of one party brings the merits of the judgment of the lower court before the Superior Court; which is competent to amend an error, of which respondent, in his answer, complains: and a separate and formal appeal, on his part, is not necessary for the purpose. *Radha Munee Devya versus Surya Munee Devya and another*, 31st May 1831, V. 120

25. A special appeal *in forma pauperis*, having been admitted contrary to Section 17, Regulation XXVIII. 1811, by two judges of the Sudder Dewanny Adawlut [Goad and Dorm] was quashed on the proposition of one of them [Dorm] before whom the trial came on, adopted by a third judge [J. Shakespear] in opposition to the opinion of the first admitting judge [Goad.] A's subsequent application to be permitted to appeal in the usual mode, was overruled, but not on its merits. Held that on the enactment of Regulation IX. 1828, his special appeal *in forma pauperis* is re-admissible on renewed oath of poverty, such rejection notwithstanding. *Mahk Yacooob and others versus Jug Jewun Dhar and others*, 3d April 1832, . . . . . V. 179

26. A special appeal admitted from a doubt whether, in a case in which an *amen* not having been sworn, previous to deputation under Section 17, Regulation IV. 1793, the defect was cured by his being subsequently sworn to his report. *Shah Newaz Khan versus Dr. Clements*, 10th January 1833, V. 261

27. A special appeal admitted on the ground of defect of investigation which appeared from the decision of the lower court. *Karta Doss Mohunt versus Lekraj and others*, 5th February 1833, . . . . . V. 266

28. A special appeal admitted because the order of the zillah judge, imposing a fine of 100 rupees on appellant for the temerity of his defence,

- was unjust and contrary to judicial practice. *Rai Radha Govind Singh versus Gorachund Gosayn*, 15th April 1833, .. .. . V. 290
29. A judgment creditor allowed to appeal from a decree which diminished the solvency of his debtor. *Imdad Ali versus Kadir Buksh and others*, 24th April 1833, .. .. . V. 296
30. A failing in an action against B, appealed: judgment creditors of B, interested in his solvency, were allowed to defend the appeal. *Aiman Beebee versus Ibrahim Khan*, 9th May 1833, .. .. . V. 304
31. Where a course of procedure prescribed by Regulation had not been observed, [e. g. that directed in Clause 2, Section 3, Regulation II. 1805, where fraud is alleged as a bar of limitation,] the Sudder Dewanny Adawlut admitted a special appeal. *Pran Kishen Neogee and others versus Sudderoodeen Chowdry*, 9th September 1833, .. .. . V. 323
32. Where an appeal from a judgment affecting the interests of Government was admitted after a lapse of 5 months and 13 days from its date, appellant justified delay by the necessity of reference to and sanction of the superior functionaries of Government. *Collector of Chittagong versus Krishn Kishwar*, 30th September 1833, .. .. . V. 331
33. One judge of the Sudder Dewanny Adawlut finally decided a special appeal admitted by another, though he did not adopt the legal ground on which the appeal was admitted. *Collector of Chittagong versus Krishn Kishwar*, 30th September 1833, .. .. . V. 331
34. Two judges of the Sudder Dewanny Adawlut admitted a special appeal, because the lower courts had decided the case, in which a question of Hindu law was involved, without reference to the law officer. *Krupa Smidhu Patjoshi and others versus Kanhaya Acharya and others*, 31st December 1833, .. .. . V. 335
35. In an action to recover on a conditional sale, the plaintiff recovered in the lower courts on the ground that the sale had become absolute by default of vendor to repay all, within the legal time; but vendee had received rent from the sold property, and had continued to receive partial payments after default, and vendor had deposited in court a sum as balance due to the vendee. A special appeal was admitted because the lower courts had not enquired into the state of account, nor as to disputed service of notice under Section 8, Regulation XVII. 1806, on vendor. *Parasnath Chowdry versus Lala Behari Lal*, 28th February 1834, .. .. . V. 346
36. The defendant having failed to appear in the court of original jurisdiction, and having shewn no good reason for the default, the Court would not entertain his appeal, or enter into his objections to the claim. *Mofeezooddeen versus Ram Ruttun Roy*, 6th June 1840, .. .. . VI. 288
37. An appellate court should not dictate to lower court what decision it should pass. *Rajah Mode Nurain Singh versus Musst. Man Kouowur and another*, 26th April 1845, .. .. . VII. 203
38. An appellate court is bound to assign reasons for reversing a lower court's judgment. *Hurreekishen Sircar versus Madhub Chundur Ghose and another*, 14th June 1847, .. .. . VII. 340
39. Value of stamp in certain cases may be less in appeal than for original plaint. *Hurnath Surmah Chowdry and others versus Collector and Deputy Collector of Mymensingh*, 24th June 1847, .. .. . VII. 347
40. In an appeal from a judgment of nonsuit, an appellate court should determine the propriety or otherwise of such an order, and not decide upon the merits of the claim, which involves the assumption of original jurisdiction. *Sunkurree Dassea versus Pertab Chunder Rae and others*, 19th August 1847, .. .. . VII. 385
41. The original record of a case appealed had been destroyed by fire, what the appellate court should have done under the circumstances. *Byjnath Sem versus Gopee Kaunth Rae and others*, 19th August 1847, .. .. . VII. 386



42. Course to be pursued by an appellate court in an appeal from an *ex parte* award, when default has been explained or otherwise. *Bodho Mehton and others versus Radha Bibi and others*, 22nd September 1847.... VII. 398

43. An appellant resting his case on the proceedings in the lower court, is entitled to have his appeal disposed of on the record. *Jugmohun Mullick versus Bholanath Bhattacharj and others*, 8th March 1848,... VII.

44. An appeal from the decision of a principal sudder ameen as *ex-officio* sudder ameen, should be disposed of by the zillah judge. *Sheonath Singh and another versus Sheikh Hadi Ali*, 22nd July 1848, .... VII.

45. Construction No. 868 only refers to cases in which one and the same issue is before the court. *William Macpherson versus Khajeh Gabriel Avietick Ter Stephanos*, 21st June 1848, .. .... VII.

46. A zillah judge cannot try an appeal from his own decision while collector, passed under Section 30, Regulation II. 1819. *Guru Das Koond versus Odenarain Raee and others*, 28th December 1848. .. .... VII.

### ARBITRATION.

1. By Section 28, Regulation V. 1793, an appeal from a decision founded on the award of arbitrators may be admitted, without, in the first instance, requiring proof of their corruption or partiality. *Debee Pershad Sein versus Inderjeet Sein and another*, 19th May 1809, .. .... I. 288

2. In the case of an appeal to the provincial court, from the decree of a zillah court, founded on the award of arbitrators alleged to have been guilty of partiality and corruption, should the charge not be proved, and the appeal be dismissed, interest should be awarded from the date of the zillah decree, under the general rule contained in Section 3, Regulation XIII. 1796, even though the provincial court did not go into the merits of the case. *Mr. John Buckley versus Ramsoonder Ghose*, 17th November 1810, .. .... I. 312

3. The appellant, a Hindu woman, who had embraced the Mahomedan faith, sued her husband to recover property which devolved on her at the death of her parents. A *punchayt* decided that she [previous to her apostacy] had forfeited all claim to the property in question by her profligacy: the award was upheld, and her claim dismissed. *Musst. Rubbee Koor versus Jewut Ram*, 1st April 1818, .. .... II. 257

4. The order of a zillah judge for the execution of a private award of arbitration is not open to appeal. The award can only be set aside on proof, in a regular suit, that the arbitrators have been guilty of partiality or corruption. *Ram Surrun versus Saboodha Misser*, 8th January 1820, III. 4

5. A claim to set aside an award of arbitration after a silence of 10 years dismissed. *Mozuffer Ali Khan versus Fukeer Chund and others*, 22nd March 1825,... .. IV. 46

6. A, a Hindu, repudiated a settlement made by his elder brother of estates therein alleged to be the sole acquisition of B, by which  $\frac{1}{2}$  was allotted to him, and sought to recover a moiety of a part by title of community. Pending litigation, an award of arbitration under bond of submission was passed in conformity with the deed; and a compromise was had, in pursuance of which A signed a retraction, which he subsequently denied and failed to file in court. His claim to half by title of community was disallowed, but he obtained a decree for quarter on the deed; and, in a later suit brought by A against the heirs of B, it was held that the judgment of the court must be ruled by the prior decision, and that A should recover quarter share under the deed of compromise, his repudiation and denial notwithstanding. *Bamun Doss Mukhopudya and others versus Radhanath Mukhopudya*, 18th April 1832, .. .... V. 187

7. A *cazee* and a *sudder ameen* are not public officers, whom a zillah judge, under Section 4, Regulation XVI. 1793, is not to permit to per-

form the office of arbitrator. *Shah Newaz Khan versus Dr. Clement*, 10th January 1833, .. .. . V. 261

8. Where arbitrators had made an extra-judicial award of partition amongst brothers, one of the brothers receded from it, and the others, in suing, claimed their full legal right according to their allegation as to facts. Defendant did not claim benefit of the award; but the *Sudder Dewanny Adawlut* adopted the partition proposed by the arbitrators as equitable, and disregarded the rest of the awards. *Kirpa Sindha Patjoshi and others, versus Kanhaya Acharya and others*, 31st December 1833, .. .. . V. 335

9. A, by receding from an award made by arbitrators on his contest with B, to which both at first assented, compelled B to sue for his legal claim. A defended, and B was nonsuited for some informality by the lower court; and, instead of appealing, sued *de novo*. The second suit is tried on special appeal by the *Sudder Dewanny Adawlut*, which decreed the right of B to be according to the award as to part, and more than the award as to part. *Ibid. Ibid.*, .. .. . V. 335

10. An objection having been raised to an award of arbitration, to the effect that one of the arbitrators had not accompanied the other to the disputed lands for the purpose of local investigation, it was overruled, and the decision of the arbitrators upheld. *Gouree Kunt Bhuttacharji and another versus Kala Pershad Chowdry and another*, 5th February 1836, .. .. . VI. 51

11. Held by the *Sudder Dewanny Adawlut* that the award of arbitrators cannot be set aside; but, if it be not sufficiently specific, the matter may be referred back to them for their award to be amended. *Man Singh and another versus Deyalee Dassca and another*, 28th November 1814, .. .. . VII. 185

12. One of four arbitrators having died, the award of the three survivors not invalidated, under the implied consent of the parties to abide by their decision. *Maharajah Moheshur Buksh Singh versus Syud Oulad Hosein*, 4th April 1848, .. .. . VII. 480

13. Want of unanimity on the part of arbitrators, is an insufficient reason for setting aside their award. *Rajnaath Tewarree versus Gyanarain Pandeh*, 5th April 1848, .. .. . VII. 484

See 'Practice,' 70.

#### ARMENIAN LAW.

1. Held that according to the practice of the *Sudder Dewanny Adawlut*, suits regarding inheritance between Armenians should be decided according to the exposition of the law current among them, as given by the ecclesiastical authorities of the Armenian Church, until otherwise provided for by legislative enactment. *D. M. F. Beglar versus Behi Dashkoor Wanis Cacheluk*, 28th January 1842, .. .. . VII. 72

2. In a suit by a wife against her husband (both Armenian Christians) for property acquired by the former before marriage, an anti-nuptial contract on the part of the husband, in reservation of his wife's independent authority over the property, was made the basis of the judgment in her favor, and the English law was held inapplicable to the case. *Arratoon Harapuet Arratoon versus Catherina Arratoon*, 17th August 1848, .. .. . VII.

See 'Bequests,' Nos. 1, 2.

'Widows,' No. 3.

'Practice,' No. 98.

#### ARREARS OF RENT.

1. Claim by zemindars against a *talookdar* for balance of rent alleged to be due on the lands of the latter, on account of preceding years, during which they were stated to have paid at too low a rate. The lands of the *talookdar* appearing separable from the zemindaree, judgment was given for their separation, and for the balance to be settled according to the rate of revenue which should be then assessable on them. *Birj Kishwar and others versus Sumbhoo Chund Rai*, 13th June 1806, .. .. . I. 141

2. Claim by a zemindar on a *talookdar* for balance of rent alleged to be due on the lands of the latter on account of preceding years, during which they were stated to have paid at too low a rent. The rent of the *talook* appearing variable, and there not being any settled rate of similar tenures in the *pergunnah*, according to which it could be determined, judgment for the rate being fixed, for future years, by actual survey, and past accounts being settled at the rate so fixed. *Bunchanund versus Hurgopal Bhaduree* and another, 21st July 1806, . . . . . I. 145

3. On a summary suit under Regulation VII. 1799, by a zemindar against a dependent *talookdar*, for arrears of rent, calculated according to a survey and measurement, to which the defendant pleaded a right to hold his tenure at a fixed rent: held, that the zillah court is competent to pass a summary order, with a regular suit at the option of the party cast. *Raja Rajkishen versus Ram Nurain*, 10th August 1807, . . . . . I. 208

4. In a summary suit by the purchaser of a zemindaree against a tenant, for rent at the *pergunnah* rates, the tenant, who pleaded a fixed *jumma*, not having shewn cause why the rent demanded should not be paid, such rent adjudged to the plaintiff under Regulation VII. 1799, with the option to the defendant to bring a regular suit; the summary decision of the zillah judge, in such case, not appealable [except on special grounds] under Section 18 of the Regulation cited. *Huri Mohun Thakoor versus Ram Nurain Doe*, 12th September 1808, . . . . . I. 255

5. The fact of a party having sued summarily for the rents of one period, is no ground for concluding that he abandons his claim for balances of previous years, for which he cannot sue summarily. *Ramgopal Mookerjeea versus Gholam Durbesh Jowur* and others, 24th June 1847, . . . . . VII. 348

6. What a farmer suing for arrears of rent at a certain rate is bound to do, his claim being disputed by the tenant. *Sheikh Nubbee Buksh versus Shewuk Mehtoon*, 29th January 1848, . . . . . VII. 427  
See 'Attachment,' No. 9.

#### ARZAMINEE.

1. *Arzaminee* is counter security, entered into by a third party to indemnify a surety against any loss he may sustain, by being security for the sums collected from certain lands left in the possession of the principal, pending an appeal. *Jhyntee Ram Misser* and others *versus* *Raja Mhupal Sing* and another, 8th November 1819, . . . . . II. 316

#### ASSESSMENT.

1. On a claim being preferred by the respondent [*talookdar*] against the appellants [zemindars] to recover excess of rent levied from his *talook*, the claim was disallowed; it appearing that additions had been made to the assessment within the period of 12 years antecedent to the decennial settlement, and there being no mention made of a *mocurruree* tenure on his part in any authentic document. *Bhobinder Nurain* and another *versus* *Bishen Nath Rai*, 14th August 1805, . . . . . I. 100

2. The period of 12 years, noticed in the above case, has reference to Section 49, Regulation VIII. 1792, which declares that tenants at a fixed rent [denominated *istemrardars* or *mocurrureedars*] 'who have held their lands at a fixed rent for more than 12 years, are not liable to be assessed with any increase by the officers of Government, or by the zemindar, or other actual proprietor of land.' This rule was enacted at the time of forming a permanent settlement of the land revenue in 1790, and was in consistency with another rule [Section 76, Regulation VIII. 1793,] whereby Government exempted from any increase of the public assessment 'all separated *talooks*, as well as all lands heretofore paying revenue immediately to Government, which had been held at a fixed *jumma* during the last 12 years.' *Bhobinder Nurain* and another *versus* *Bishennath Rai*, 14th August 1805, I. 102 Note.

3. Claim by a purchaser of part of an estate at a public sale to an abatement of assessment, on the ground that the papers exhibited at the time of sale, detailing the particulars of the lands, were erroneous. Claim rejected, on the ground that the power of altering the public assessment in such cases [which is reserved to Government by Section 29, Regulation VII. 1799, under the conditions therein stated,] is not vested by the Regulations in the civil courts. *Doorga Pershad Bose versus Collector 24-Pergunnahs, 18th August 1806,* . . . . . I. 155

4. Held, that under the provisions of Section 2, Regulation XLIV. 1793, [rescinded by Section 2, Regulation V. 1812, but re-enacted as regards the ceded and conquered provinces and Cuttack by Regulation XIV. 1812] which prohibit engagements fixing the rent of dependent *talooks* for a term exceeding 10 years, an engagement fixing the rent in perpetuity would be invalid as regards the rent; but that it does not follow that the sale of the dependent *talookdaree* tenure should, on the same account, be void. *Munroop Rai versus Ramjee Banoja* and another, 22nd December 1806, I. 172

*Petumber Bhuttacharj versus Ramjee Banoja*, 3rd July 1807, . . . . . I. 195

5. In fixing the rent of a dependent *talookdar*, the charges of collection, and 10 per cent., must be deducted from the actual produce of the land, as directed by Regulation V. 1812. *Gopee Mohun Thakoor* and another *versus Radha Mohun Ghose*, 29th June 1812, . . . . . II. 17

6. Suit for the adjustment of the rent of a dependent *talook*, assessable at the *pergunnah* rates. Determined that the lands should be measured by the rod in common use, and assessed according to the rates of a former settlement, inclusive of *abwab* and *sulance*, ordered to be consolidated by Regulation VIII. 1793, and subject to the customary deduction in favor of the *talookdar*. *Ram Kaint Dutt* and another *versus Gholam Nubbee Chowdry*, 10th May 1813, . . . . . II. 50

7. In a suit by a zemindar against a *talookdar* for arrears of rent, the latter pleads an engagement contracted by him with the former proprietor, authorizing him to hold his lands as an independent tenure at a fixed rent. The plaintiff purchased the zemindaree partly by private contract, and partly at a public sale for discharge of arrears of revenue. Decreed, in conformity with the provisions of Regulation XLIV. 1793, that the defendant's engagement, as far as regards the rent of that part of his *talook* which is included in the public purchase of the plaintiff, is null and void; but that the terms of the engagement hold good for the period of 10 years, as regards that part of the *talook* included in the private purchase. *Radha Mohun Ghose versus Bhurut Chund Ghose*, 1st September 1813, . . . . . II. 80

8. A *talook* separated from a zemindaree by the consent of the parties concerned, and assessed by the collector at a rate of *jumma* to which it was subject previously to the separation without reference to its actual produce; such assessment declared null and void, and another directed to be made according to Clause 5, Section 10, Regulation I. 1793, which prescribes that when a portion of an estate shall be transferred by private sale, gift or otherwise, the assessment of the portion so transferred shall be fixed at an amount which shall bear the same proportion to its actual produce, as the assessment of the whole estate may bear to the whole of the actual produce. *Bahoo Gopee Mohun versus Ishry Churn* and others, 7th December 1813, . . . . . II. 100

9. A *birmooter* tenure having been erroneously included in the assets of an estate sold by public auction, and recovered from the public purchaser at the suit of the proprietor, no deduction of assessment can be granted on that account by the judicial authorities; but an option of relinquishing his purchase will be given to the purchaser. The latter, availing himself of the option of retaining his purchase at the assessment fixed on the estate at the time of the purchase sale, is entitled to no retrospective indemnification for revenue paid by him, on account of revenue of the *birmooter* tenure erroneously included in his purchase; but a proportion of the purchase money, computed

to be the amount paid for the tenure adjudged to the proprietor thereof, was ordered to be restored to the purchaser by the original zemindar. *Ram Doolal Misser versus Modum Mohun Bhuttacharj and others*, 17th April 1815, II. 143

10. During the time a *pergunnah* belonging to Government was held *khas*, certain lands were made free of assessment by *lakhiraj sunnuds* duly sanctioned; and afterwards the *pergunnah* was sold by auction as a zemindaree, subject to a specific *jumma*; the purchaser sues Government for a deduction in his *jumma*, on account of the lands included in the previous grants. Claim disallowed, the *jumma* payable by him having been distinctly mentioned in the proclamation advertising the sale. *Baboo Birjnath and others versus Collector of Burdwan*, 29th May 1817, . . . . . II. 240

11. The power of altering the public assessment is not vested by the Regulations in the civil courts of judicature, but is reserved exclusively to the Governor General in Council. *Buwanee Pershad Chuckerbuttee and others versus Musst. Coroonna Mye and others*, 7th June 1817, . . . . . II. 242

12. The assessment imposed at the time of the decennial settlement on a *talook*, held under a *jungleboory* tenure, is liable to be enhanced according to the *pergunnah* rates, on a measurement of the lands brought into cultivation. *Khajeh Arratoon and another versus Doorga Pershad Bhuttacharj and others*, 18th July 1820, . . . . . III. 34

13. A dependent *talook*, for which a *sunnud* had been granted by the former proprietor to hold at a fixed rent, but which was granted within 12 years before the decennial settlement, held liable to increase of assessment by the present proprietor, though not an auction purchaser. *Khajeh Nekoo Marcar versus Ram Lochun Ghose*, 20th March 1823, . . . . . III. 221

14. An engagement having been taken from a landholder in Cuttack to pay so much for his *talook*, in the event of all the lands therein being declared, by the result of a suit he had instituted, to be liable to assessment: held by the commissioner, that, on decree to that effect, the revenue of such lands should belong to Government, though exceeding 10 *biggahs*. Decree affirmed by the Sudder Dewanny Adawlut. *Gungadhur Peharce and others versus Hurchunder Ghose and others*, 29th July 1823, . . . . . III. 253

15. Held that lands granted by the former *soobadar* of Cuttack to a *khundait*, or *sirdar of pykes*, who had held them at an invariable quit-rent for more than 12 years before the Company's Government, are not liable to an increase of assessment, although the grant did not specify the terms, *mocurrree*, *istumrree*, or other word signifying perpetuity. *Mahomed Ismael Jemadar versus Rajah Bulungee Surrun*, 3rd May 1824, . . . . . III. 346

16. On suit by respondent to be exempted from demand of increased assessment, claim disallowed on proof that the former collector had erroneously granted a zemindaree *pottah* deducting an allowance for *dehyek* and *bhuray*, which was the right of *tuhseeldars* alone, and had been resumed on a settlement with the proprietors; but the decree providing that no further increase should be demanded, a petition of review was granted at the suit of the collector, and it was finally decreed that respondent should not be exempted from the increased demand, but that, if dissatisfied therewith, he might apply for a new settlement. *Collector of Benares versus Baboo Ulruk Sing*, 26th June 1824, . . . . . III. 381

17. *Pottahs* granted by the ostensible auction purchaser of lands, and conditioning that at the end of 10 years the lease should continue on the same terms, [it being then by Regulation XLIV. 1793, not legal to grant a longer lease than 10 years,] held to be binding against the real purchaser, and good against his claim to enhanced rent at the end of that term, without, however, affecting the rights of Government, or of any future auction purchaser of the whole *pergunnah*, in case of a public sale for arrears. *Ram Nurain Rai, versus Reazooddeen and others*, . . . . . IV. 193

18. In a suit for possession of an estate by certain zemindars against a farmer, who demanded a right to hold the lands on a perpetual tenure on a fixed rent, judgment in favor of the plaintiffs; the defendant not being able

to substantiate his plea : and a claim to compensation, preferred by the ~~same~~ plaintiffs, for *sayer* resumed duties from a *gunge* established by the farmers, rejected, as not belonging to the proprietors of the land ; but the provincial court having adjudged that neither party had a right to compensation, so much of their decree was reversed, the point for decision being simply whether, or not, the right lay in the claimant. *Edward Brightman versus* Casinath Banerjee and others, 17th January 1827, . . . . . IV. 201

19. Held that since the perpetual settlement, a claim for *mocuddumee*, *chowdraee*, or *chukladaree* fees, will not lie against a zemindar. *Kulcan Chowdry versus* Raja Ikbal Ali, 19th February 1827, . . . . . IV. 215

20. Held that the spirit of Section 29, Regulation VIII. 1799, is applicable to entire estates, or *mehals*, sold by auction, as well as to separate lots of an estate so sold ; and a court of justice is no more authorized in one case, than in the other, to direct any abatement in the amount of the annual *jumma* fixed. *Anund Myc Biswas versus* Collector of 24-Pegunnahs, 14th May 1827, . . . . . IV. 233

21. Lands held at an invariable quit-rent by the appellants and their ancestors, under *mocurruree puttahs*, for a period of 38 years, held not liable to an enhanced assessment, though the grants did not specify that the tenure should be hereditary. *Joba Singh and others versus* Meer Nujeeboolla and others, 29th November 1827, . . . . . IV. 271

22. Held that a *mocurruree* tenure, confirmed at the decennial settlement by Government, when all the circumstances connected with the original grant were known, cannot be resumed on the ground of want of authority in the original grantor, after a lapse of 28 years, during which time the rent had been fixed at an invariable rate. *Baboo Byjuath Sahoo versus* Government, 29th November 1827, . . . . . IV. 275

23. Judgment to hold lands in under tenure, does not necessarily imply a right to hold at a fixed rent. *Fyazoodden versus* Rajchunder Rai, 17th July 1830, . . . . . V. 46

24. In the province of Benares, the land measure described in Section 5, Regulation II. 1795, is not restrictive, so as to bar reference to any other standard locally current ; nor is the intervention of *ameens* and *canoongoes*, for the adjustment of money rents, imperative, particularly since the enactment of Regulations V. and XVIII. 1812. *Rughoober Rai versus* Baboo Sheo Nairayn Singh, 20th December 1830, . . . . . V. 77

25. An under tenant of *mal* land in the 24-Pegunnahs, repelled the claim of the *talookdar* to levy enhanced rent on his tenure at the improved *pergunnah* rate, by pleading exemption from increase on the rent settled by the Government survey and *jumabundee* of 1190 B. S., and continuous payment at that rate. On proof that the local rate had risen, and on defect of proof by the defendant as to the legal fixed character of the rent heretofore paid by him on his tenure, his plea was overruled ; and the right of the superior landlord to proceed to assess the tenure at the improved customary rate, under Regulation V. 1812, awarded. *Musst. Deb Rancee versus* Ram Nurain Nag, 24th March 1831, . . . . . V. 102

26. A, as zemindar, exacted rent from B, in excess of the sum which, the latter contended, was the fixed and unenhanceable rent of his *talook*. B recovers excess in a suit for the same, in which his right to hold at a fixed rent, though not made the principal demand, is incidentally adjudged. *Prasana Nath Rai versus* Rancee Kishen Muncie, 12th March 1833, . . . . . V. 274

27. The rent assets of an estate included an impost [*Gosain Taki*] levied as a pious allowance to the administrators of certain idols, such allowance having been disbursed to them by the zemindar. The assessment was made on a calculation which excluded this item. The zemindaree having been split by public sales, one of the administrators sued the auction purchaser of one portion for his *quota* of the allowance. The claim was adjudged by the zillah court, and affirmed by the provincial court of appeal,

on the ground of prior decision and payment by the court of wards on part of a minor zemindar. This judgment was reversed by two judges of the Sudder Dewanny Adawlut not on identical motives. One did not find the title of the plaintiff proved, nor the fact of the levy of the impost on the section of the zemindaree held by defendant; the claim too appearing to him barred by prescription, the defendant and his father having held many years without payment. The other held that there was no proof that the revenue officers had confirmed any grant of the former zemindar, and that the charge on the rents of the section sold was not obligatory on the new zemindar, who had acquired by sale the entire zemindaree right, the allowance being consolidated in the general rent roll. The fact, that the apportioned *jumma* on the estate sold, resulted after deduction of the allowance, did not sustain the claim. *Rai Radha Govind Singh versus Gora Chund Gosayn*, 15th April 1833, . . . . . V. 290

28. A decree given against a proprietor, who has purchased at a public sale for arrears of revenue, awarding the right of possession to a party who claims to hold an under tenure at a fixed rent, is no bar to an action by the proprietor to establish his right to an increased rent. *Doorga Pershad versus Dr. Clementi*, 2nd August 1837, . . . . . VI. 179

29. Held that a notice issued under Section 9, Regulation V. 1812, must specify the rent to which the parties served with it are to be made liable, and must intimate how the landholder has acquired the right of enhancing the demand. *Sobhnath Misser and others versus Geinda Lal and another*, 29th February 1844, . . . . . VII. 156

30. In an action for damages instituted under Clause 8, Section 15, Regulation VII. 1799, by a landholder against tenants resisting measurement of lands, the plaintiff may convert the rent to which he is entitled into damages, and obtain judgment on proof. *Gungapershad Ghose versus Ram Fotdar and others*, 13th June 1846, . . . . . VII. 263

31. Held that a notice issued under Section 9, Regulation V. 1812, is not vitiated by an omission to specify the quantity of land in the possession of the parties served with it, or of the names of all the parties in possession; it being sufficient to specify the names of those recorded as such in the zemindar's office. *Muharajah Kishen Kishore Manik versus Rajchunder Dhur and others*, 14th April 1846, . . . . . VII. 261

32. A manager of an estate, appointed under Section 26, Regulation V. 1812, and Regulation V. 1827, is competent to grant a farming lease of any part of the property under his charge. A farmer, holding his lease from such manager, is competent to enforce the provisions of Sections 9 and 10, Regulation V. 1812, in regard to the enhancement of rent. *Sheikh Emaum Buksh versus Sheikh Anayut Ali*, 12th August 1846, . . . . . VII. 277

33. Judgment of lower court reversed, because it awarded enhanced rent without proof of prescribed notice under Sections 9 and 10, Regulation V. 1812. *Taramunni Chowdram versus Gour Kishore Nag and others*, 10th June 1847, . . . . . VII. 315

34. The *onus probandi* of exemption from enhanced rates claimed by a *talookdar*, not of the nature specified in Section 51, Regulation VIII. 1793, rests with him. *Kali Das Neogee versus Dyanath Race and others*, 10th August 1847, . . . . . VII. 378

35. The lower courts dismissed as suit for enhanced rents, on the ground that the prior notice of demand per Section 9, Regulation V. 1812, did not contain the previous *jumma*, nor the quantity of lands on which the increase was demandable; but as such particulars are not required to be stated, their decisions reversed and case remanded. *Khosalee Biswas versus Sheikh Kureemoollah and others*, 31st August 1847, . . . . . VII. 388

36. In a suit by a *huwaladar* to raise the rents of his *neem-huwaladars*, in consequence of his own *jumma* having been enhanced by the *talookdars*, the lower appellate court's decree for plaintiff, on the principle that the

subordinate holders were liable to enhancement in the same proportion as their superiors, was set aside, and the case remanded to be disposed of according to the rates paid in the *pergunnah* by *neem-huwaladars* to *huwaladars*. Mirtunjoy Mookerjee and others *versus* Manick Chunder Das. 5th February 1848, .. .. VII. 430  
See 'Auction Sales,' No. 23.

## ASSETS.

See 'Assessment,' No. 9.  
'Rent-free Tenures,' No. 10.  
'Debts,' Nos. 1, 2. Part III. Mahomedan Law.  
'Dower,' No. 29. Part III. Mahomedan Law.

## ASSIGNMENT.

See 'Actions,' No. 21.  
'Debts,' No. 3.

## ATTACHMENTS.

1. An attachment of lands by the Supreme Court, pleaded by the purchaser at the sheriff's sale, against the validity of a mortgage and conditional sale of part of the lands during the attachment. Plea disallowed, on proof that the sheriff's sale took place in satisfaction of a different demand, and in execution of a different judgment than that under which the original seizure was made : not shewn also that any legal attachment by the Supreme Court existed at the time of the mortgage, on which a judgment had been obtained in the zillah court before the sheriff's sale. *Petumber Ghose versus Ghureboollah*, 3rd October 1806, .. .. I. 167

2. But a private sale of a dependent *talook*, made by the zemindar while his zemindarce was under attachment by the Supreme Court, which ended in the public sale of it, declared invalid against the purchaser at the public sale, though obligatory on the zemindar, or his successor, in the event of the public sale being set aside by the Supreme Court. *Munroop Rai versus Ramjee Bunoja* and another, 22nd December 1806, .. .. I. 172  
*Petumber Bhattacharj versus Ramjee Bunoja*, 3rd July 1807, .. .. I. 195

3. Property belonging to a public defaulter being attached, and about to be sold in satisfaction of the dues of Government, should another person claim that property, it is sufficient that previous to the sale a summary enquiry be made into the merits of the claim. A formal enquiry is not in the first instance necessary. But it is at the option of the claimant to institute, subsequently, a regular suit; and, if his title be proved, the sale will be void, and the property adjudged to him with costs. *Government, Meer Ushruf Ali and others versus Musst. Kishoree*, 25th November 1815, .. II. 162

4. The same rule holds good with regard to property under attachment and about to be sold in satisfaction of a decree. *Government, Meer Ushruf Ali and others versus Musst. Kishoree*, 25th November 1815, .. II. 162

5. Construction 588 (para. 4) which rules that a defendant may legally alienate his property, prior to proclamation of attachment under Clause 2, Section 2, Regulation II. 1806, held to be applicable only to *bonâ fide* sales. *Bhog Ray Thakoor versus Futtch Chund Sahoo*, 17th February 1845, .. VII. 191

6. Plaintiffs held money decrees against one Nurunjon Singh, and took out execution against his property, which was attached. The defendant pleaded a private sale to himself. Sale was stopped: and the plaintiffs referred to a regular suit to prove the liability of the property for the debts of Nurunjon Singh. This suit was brought accordingly, and decided in favor of the plaintiffs by the principal sudder ameen, who found that the sale was a fictitious transaction to defeat the claims of the plaintiffs. The Court, for the same reasons, confirmed the decree of the lower court, notwithstanding the attachment under Regulation II. 1806, which had been applied for, had not been actually issued. *Baboo Odyet Nurain Singh versus Juggomohun Doss* and another, 8th January 1844, .. .. VII. 147



7. Real property had been bought from a person who was a judgment debtor, after date of judgment. The question was, whether the sale, under such circumstances, was legal? The Court, as there was no attachment of the property at the time, decreed its legality. *Beepur Churn Chuckerbuttee versus Muharajah Dheeraj Mehtab Chund* and another, 27th March 1844, VII. 157

8. The *onus probandi* what has become of property illegally attached, rests with the wrong doer. *Jobah Chowdree versus Purtab Nurain Singh*, 6th January 1848, .. .. VII. 423

9. In a suit for arrears of rent, the defendants were exonerated from the demand on the ground, although not urged by them, of illegal attachment of the lands by plaintiff. *Govind Misr and another versus Setaram Opadhya*, 11th March 1848, .. .. VII. 471

## ATTORNEY.

See 'Absentee,' No. 1.

'Practice,' No. 14.

## ATTORNEY'S COSTS.

1. Held by the Sudder Dewanny Adawlut, that attorney's costs, incurred by a creditor for making a demand on a resident in the *mofussil*, who was not amenable to the jurisdiction of the Supreme Court, is not recoverable by action in the *mofussil* courts. *Mr. John Atkinson versus Mr. George Evans*, 30th June 1836, .. .. VI. 75

## AUCTION SALES.

For sales in fictitious names, see 'Agents,' Nos. 3, 5, 7, 8, 12, 15, 16.

Claims by Auction Purchasers to abatement of Assessment, see 'Assessment,' Nos. 3, 9, 10.

1. In case of an evident and material error in the description of the land advertised to be sold and specified in the bill of sale delivered to the purchaser, if redress be not granted on application to the Board of Revenue and Governor General in Council, the purchaser is at liberty to sue in the mode prescribed for public suits, to have the sale annulled by judicial process, and the purchase money restored to him. *Doorga Pershad Bose versus Collector of 24-Pergunnahs*, 18th August 1806, .... I. 157 Note.

2. On a claim by A to hold at a fixed rent certain lands in a *mehal* purchased at public sale by B, judgment for A on proof of an hereditary right to the tenure. B declared at liberty to relinquish his purchase, in consequence of the rent of those lands having been erroneously described at the time of sale. *Collector of Dinagepore and another versus Gorachund Serma*, 23rd January 1807, .. .. I. 176

3. Claim to certain lands, as included in a *pergunnah* sold to the plaintiff at public auction, but withheld by the defendant on plea of a prior private sale from the late zemindar. The private sale adjudged invalid, [although the land had been separated and assessed by the collector;] as the sanction of the Board of Revenue, which the Regulations require in such cases, had not been obtained, and the Board had re-annexed the lands to the *pergunnah*, and included them in the public sale. *Sham Rai and another versus Collector of Jessore and another*, 5th July 1808, .. I. 239

4. On a claim by A against B, to recover a *talook* in *zillah Gorruckpoor*, it being proved that the *talook* was sold to B's father, in consequence of arrears of revenue due from A, by a public officer, duly authorized, under the Government of the Nuwab Vuzeer, such sale was held conclusive, and judgment passed dismissing the claim. *Bishen Shahee versus Urmurdhun Singh*, 23rd December 1808, .. .. I. 265

5. Sale of respondent's lands, in discharge of arrears of revenue, set aside; it appearing that the estate had for several years been acknowledged by the collector and Board of Revenue, and entered in the public records as distinct from the estate on which the arrears had accrued, and that separate engagements had been taken for the public revenue, though the two estates

had never been separated in the mode prescribed by the Regulations. Collector of Tipperah and another *versus* Kishore Ram Doss, 6th June 1811, 331

6. Lands lying within the limits of a certain village, do not necessarily appertain to the public purchaser of that village, provided it shall appear that the lands have been assessed as part of another estate. Hurrish Chunder Chatterjee *versus* Mudoo Soodun Sundial, 20th March 1812, II. 8

7. A *talook* originally granted as a dependent tenure, but afterwards made independent by a *kharijnamah*, but not actually separated before a public sale of the *zemindaree*, for arrears of revenue, was included in the sale under the provisions of Section 14, Regulation I. 1801. But the auction purchasers having subsequently acknowledged the right of the *talookdar* to hold the *talook* distinct from his *zemindaree*, the separation was adjudged, notwithstanding the objections of a second purchaser of the *zemindaree* by private sale from the first purchaser. Huri Nuran Rai *versus* Rajinder Rai, 7th December 1813, .. .. II. 97

8. An auction purchaser allowed to relinquish his purchase, in consequence of a separation of a *birmooter* tenure, erroneously included in the sale. But availing himself of the option to retain his purchase at the rate assessed at the time of sale, he was held not to be entitled to any reduction of his *junma*, or retrospective indemnification for rent paid on account of the *birmooter* tenure. A portion, however, of the purchase money, computed to be the amount paid for the tenure, was ordered to be restored by the original *zemindar*. Ram Doopal Misser *versus* Muddun Mohun Bhuttachary, 17th April 1815, .. .. II. 143

9. The civil courts have no authority to annul, by a summary order, a public sale of lands made by a collector. Mirza Kureemoolla Beg *versus* Baboo Hurruck Chund, 8th January 1819, .. .. II. 284

10. A collector is not authorized to annul a sale of lands which he considers to have been made in a fictitious name, contrary to the Regulations; the power of confiscating in such cases being reserved exclusively in the Governor General in Council. Debee Dutt *versus* Collector of Goruckpore, 21st April 1819, .. .. II. 294

11. The public sale of the lands of a surety of a farmer of an *abcaree mehal*, set aside by the Sudder Dewanny Adawlut, on proof that the farmer was unable to fulfil his engagements by not being put in possession of the *mehal*, and the means of enforcing payment of the *abcaree* tax from the vendors of *taurce*. Sheikh Mozuffer Buksh *versus* Collector of Tirhoot, 12th May 1819, .. .. II. 300

12. It is essential to the validity of a public sale, that the preparatory notice be accompanied by a translation in the current language, as required by Section 32, Regulation VI. 1795, [rescinded by Section 2, but re-enacted by Clause 2, Section 7, Regulation XI. 1822]. Government and another *versus* Beehook Singh and others, 17th January 1820, .. .. III. 5

13. Lands separately assessed having been publicly sold in the same lot, the sale was set aside as illegal. Meer Sheer Ali and another *versus* Sheikh Looft Ali, 12th December 1820, .. .. III. 63

14. The non-payment of the prescribed deposit on the day of sale by an auction purchaser, is not a sufficient reason to set aside a sale, provided the purchase money be paid within the period required; but a sale may be annulled by reason of its having been made on a day different from that which was advertised. Collector of Benares and others *versus* Cosa Gir and another, 4th April 1821, .. .. III. 88

15. In a suit brought by certain joint *Hindu* proprietors, against the Collector and the surety of their co-partner, [who was treasurer, and had defaulted and absconded,] for the recovery of their shares of the joint property, which had been sold on account of the defalcation, judgment in favor of plaintiffs; and held that the surety was solely liable, he having pointed

out the property as exclusively belonging to the defaulter. Meer Ushruf Ali *versus* Musst. Gour Munnec and others, 9th July 1821, . . . III. 98

16. Held that according to the spirit of the rule contained in Section 5, Regulation XVIII. 1814, a second notice was requisite on a sale being postponed, whether the postponement arose from unavoidable cause or otherwise; and the provisions of Regulation XI. 1822, Section 9, modifying the rule above quoted, were not applicable in trying the merits of an appeal from a decision passed previously to the promulgation of the latter enactment. Collector of Bareilly *versus* Major Hearsay, 22nd July 1823, . . . III. 242

17. A *tehseldar* in Allahabad having caused certain lands, lying within the limits of his authority, to be purchased, at a public sale for arrears of public revenue, in the name of his minor son, and the same being resumed by Government under the Regulations [Section 14, Regulation XXV. and Section 9, Regulation XXVI. of 1803:] on satisfactory evidence that the lands were held by the father, a suit by the son, for their recovery, supported by the allegation of their having been purchased from the funds of a female, who had received him in adoption, dismissed by reason of the proved tenure of the father, and the absence of all previous mention of such adoption. Baboo Rutna Chundra and another *versus* Collector of Allahabad, 29th December 1823, . . . III. 280

18. In the case of the sale of one *puttee*, or share of an estate, for arrears of revenue, the loss falls on the whole of the *putteedars*, or shareholders, equally, and not on any particular individual on whose particular portion, [parcelled off by private agreement.] the arrears accrued; no formal division of the property [*butwara*] having been made in the manner prescribed by the Regulations. Bluwance Singh and others *versus* Prauput Singh and others, 19th March 1823, . . . III. 284

19. Public sales, by auction, of the defaulter's lands set aside, on the ground that notice of the intended sale was not published on the estate. Bhugwunt Singh *versus* Collector of Goruckpore and others, 30th March 1824, . . . III. 325

20. An auction sale of a defaulter's lands set aside, on the ground that the collector had purchased the lands on account of Government, and that he had refused a higher bid. Plea that the latter circumstance could only entitle the defaulter to compensation, over-ruled. Collector of Goruckpore *versus* Tooruntgir and another, 17th May 1824, . . . III. 351

21. A public sale of an estate set aside as illegal, no engagement having been entered into by the zemindar for the revenue of the year, in satisfaction of the arrears of which the estate was sold. Huri Kishen Singh and others *versus* Munsub Ali and others, 5th July 1825, . . . IV. 81

22. Held that the rule against the cognizance of claims to lands purchased in fictitious names at a public sale, applies not only to the parties engaged in the illegal transaction, but also to their heirs and others, where the illegal transaction forms the foundation of the claim. Gour Chunder Rai *versus* Hurrish Chunder Rai, 28th December 1826, . . . IV. 188

23. A public sale annulled, on the ground that villages assessed at the decennial assessment as distinct *mehals* in the name of different persons, though they may subsequently become the property of one and the same individual, cannot legally be sold to realize balances of revenue as a single estate, unless an union of estates had been formally applied for and effected under Section 6, Regulation XXV. 1793, and Section 6, Regulation XIX. 1814. Burm Deo Nurain Singh and others *versus* Hur Shunker Nurain Singh, 12th December 1829, . . . IV. 348

24. At the decennial settlement, A, as a farmer, contracted for the revenue of a village, of which B was recorded as the proprietor. The representatives of A effected the record of their names as owners, and the suppression of B's name, partly on a judgment litigation among them—

selves, in which the ownership was claimed. B's heirs succeeded, in a special appeal to the Sudder Dewanny Adawlut, to establish their right to settle for the revenue as owners; but, before their case was judicially set at rest, the village was sold for arrears of revenue, due by A's representatives as owners. At the suit of B's heirs, the sale was set aside, and their right to settle for the revenue adjudged: it being ruled that the original relation of A to Government, as farmer, was really that held by his representatives, notwithstanding the irregular record of their names as owners. Collector of Tirhoot *versus* Dheraj Pandeh and others, 24th February 1831, .. V. 92

25. Lands being advertised for sale in execution of a decree, the amount of the arrears of the public revenue due thereon was entered at the foot of the notice. Held, that the sale has the same effect as a public sale for arrears of public revenue. Surrup Chunder Rai *versus* Raja Greesh Chunder, 15th August 1831, .. V. 139

26. At the decennial settlement, several zemindars contracted in the same engagement for distinct villages, on which parts of the gross *jumma* were assessed. Ruled, that each parcel was a *huzoorree mehal*; and that were it otherwise, to sell the whole for an arrear, only two-thirds of the *sudder jumma*, was excessive, and the sale reversed accordingly. [This was before Regulation XI. 1822, which provides for the sale of an estate if any part of the rent be in arrears.] Roop Chund Shabee *versus* Jewin Lal Rai and others, 31st January 1832, .. V. 168

27. At the decennial settlement, A contracted for the revenue of a component part of his estate, in distinct *quotas*; but subsequently, in 1808, under a general requisition, issued under the authority of Government, signed a consolidated agreement. Held, nevertheless, that each component part constituted a *huzoorree mehal*, and the sale of certain villages for public arrears in 1815, set aside as illegal for the following defects: excess of value of estate selected, [this was before Regulation XI. 1822,] previous enquiry having been omitted; misdescription and omission of details of which notice and exhibition are prescribed;—omitted notice of sale postponed. Raja Mitterjeet Singh and others *versus* Baboo Kulahul Singh and others, 24th April 1832, .. V. 192

28. In a suit by a defaulter to set aside the sale of his estate, the Governor General was moved to confiscate the same for breach of Clause 3, Section 29, Regulation VII. 1799, by the buyers, who purchased in a fictitious name; but he declined to do so, doubting the extinction of the defaulter's right in the property. *Ibid*, .. V. 192

29. Several *putteedars* (A, B and C) had distinct interests in villages in Benares, for which A contracted as a *huzoorree mehal*. Of the total revenue, part was payable to the *jageerdar*. When a sale was ordered to levy arrears of 1218, F. S., B and C paid the arrear demanded, and claimed to be put in possession by the collector. In 1820 the estate was sold to recover the assigned and unassigned portions of the revenue, though B and C offered to pay the arrear. At their suit, the sale was set aside as to their *puttee*, the revenue of which was distributable under the settlement papers, because—1st, though B and C had brought an action to establish their proprietary right, in which they had succeeded, still they had tendered the amount of assigned revenue, and the collector had not been moved by the *jageerdar* to sell, and had not enquired if the assigned portion was in arrear—2nd, the collector under Section 17, Regulation VI. 1795, on deposit and tender, should have proceeded in the matter of possession claimed by B and C, their pending right of action notwithstanding. Kishen Dyal Singh and others *versus* Collector of Benares, 2nd August 1832, .. V. 223

30. When the sale of a Benares *mehal* was found illegal, A recovered his distinct *puttee* as a separate *mehal*, the total *jumma* being apportionable. The Court provided that under Section 3, Regulation I. 1795, and

custom of Benares, A was only entitled to profits from the date of a judgment establishing his proprietary right, and one-tenth of the *sudder jumma* as *malikana* prior thereto. *Ibid*, .. .. V. 223

31. When a public sale was set aside as to part, the Court arbitrarily apportioned the price. *Ibid*, .. .. V. 223

32. The Court of Wards on the report of its agent, the managing collector, caused part of its ward's estate to be sold by public auction, to levy means to satisfy judgment and other debts. The Sudder Dewanny Adawlut ruled that this was within the discretion vested in the Court of Wards under Regulation X. 1793, and that the sale could not be disturbed on grounds applicable to other public sales. Nund Coomar Rai and Government *versus* Rani Huri Pria and others, 6th September 1832, .. .. V. 233

33. The lands of the treasurer of a collector having been sold to make good the amount of embezzlements, with notice that his right and title only were offered for sale, it was held, with reference to such notice, and Sections 21 and 29, Regulation XI. 1822, that the buyer was liable to loss on re-sale, in consequence of his failure to pay the purchase money, though that loss apparently arose from the claims of others to participate, the risk thereof having been incurred by the buyer. Megh Nath Dass *versus* Collector of Purneah, 22nd November 1832, .. .. V. 238

34. Property of an embezzling public officer is sold under the rules applicable to the sale of lands to levy arrears of revenue. *Ibid*, .. V. 238

35. Under Regulation XI. 1822, two judges of the Sudder Dewanny Adawlut set aside a revenue sale, on suit of alleged defaulters, on the ground that the collector had disregarded their claim to set off money at their credit in the collectory. A third judge considered this judgment contrary to Section 10 of the Regulation, and proposed that Government should be moved to exercise its functions of grace under Section 26, in favor of the plaintiff. Udman Singh and others *versus* Collector of Patna and others, 29th July 1834, .. .. V. 358

36. A revenue sale of an estate is set aside on the suit of part only of the owners. *Ibid*, .. .. V. 358

37. The Board of Revenue, which had confirmed a revenue sale, afterwards finding it exceptionable and untenable, advised the buyer to abandon it, and warned him that the Board would not defend the action of the ex-owners to set it aside. The Sudder Dewanny Adawlut, who reversed the sale, charged the buyer with the costs of plaintiff, and only allowed him interest on the purchase money to be refunded up to the date of warning. *Ibid*, .. .. V. 358

38. The mere fact of an estate having been sold at a public sale for arrears of revenue, does not exempt the purchaser from liability to an action for *mesne* profits during the period of his possession, in the event of the sale being set aside by a civil action. Hur Shunker Nurain Singh *versus* Bishen Deo Nurain Singh and others, 30th June 1842, .. .. VII. 107

39. In a sale of lands made in execution of a decree, the notice of sale must be promulgated or stuck up in the principal town or village appertaining to the property to be sold. Rancee Moradun *versus* Musst. Roop Kowur and another, 3rd October 1844, .. .. VII. 184

40. The purchaser at a sale, in satisfaction of a decree of Court, of a party's rights and interests, is entitled to have the sale annulled, and recover the sale proceeds, on the non-existence of any rights and interests being established. Achee Lall and another *versus* Bibi Basreh and others, 8th June 1846, .. .. VII. 262

41. Of several sharers of an estate, sold for arrears of revenue, one received his share of the surplus proceeds; two others moved the commissioner of revenue and the civil court to have their shares applied to the satisfaction of decrees against them; the shares of the rest were similarly

applied after issue of notice to them, and no objection offered. Held, that under Clause 1, Section 27, Regulation XI. 1822, the sale could not be contested by any of the sharers. *Musst. Dye Maye Dibben and others versus Collector of Bhuloah and others*, 3rd August 1846, . . . . . VII. 274

42. Suit to reverse a revenue sale: judgment of lower court dismissing the claim upheld in appeal; plaintiff having allowed part of the proceeds to be applied to his benefit, without objection made after confirmation of the sale by the Revenue Board, although he had opposed such application before hand. *Doorgapurshad Mungra versus Collector of the Northern Division Cuttack and others*, 8th February 1848, . . . . . VII. 436

43. The purchasers of an estate, sold for arrears of revenue, having relinquished it on the reversal of the sale by a decree of a zillah court, the collector alone appealed. Held, that the collector was not justified in deducting from the amount of purchase money the sum due on account of Government revenue, for the period intervening between the date of the relinquishment of the estate by the purchasers, and that of dismissal of his appeal against the reversal of sale. *Collector of Dacca versus G. Lamb and others*, 9th March 1848, . . . . . VII. 446

44. Suit to reverse the sale of an estate sold for arrears of revenue: the plea was that the estate was sold for a demand in excess of what was due, notwithstanding tender of the real balance before proceeding to sale. Judgment of lower court in favor of plaintiff affirmed; and sale set aside on the suit of only one of the owners. *Collector of Backergunge, versus Indermunee Chowdhraim and another*, 9th March 1848, . . . . . VII. 462

45. Payment by the civil court of the debts of a co-sharer, out of the proceeds of the sale, held not to bar a right of action by plaintiff, who was not shewn to have acquiesced in any way, either expressly or tacitly, in such payment. *Ibid*, . . . . . VII. 462

46. A public purchaser at a sale for arrears of revenue, having relinquished the estate to the former proprietors, on the ground of an admitted illegality in the sale: held that the former proprietors are not entitled to exercise the privileges of an auction purchaser. *Sreemunt Lal Khan versus Messrs. J. and R. Watson*, 13th July 1848, . . . . . VII.

See 'Practice,' Nos. 85, 96.

#### AUMEEN.

1. Where an *aumeen* had not been sworn, previous to deputation, under Section 17, Regulation IV. 1793, but had been subsequently sworn to his report, two judges admitted a special appeal from the doubt; but one judge judicially determined that the defect was cured. *Shah Newaz Khan versus Dr. Clementi*, 10th January 1833, . . . . . V. 261

#### AWARD.

See 'Arbitration,' Nos. 1, 2, 3, 4, 5, 6.

#### AYMA.

See 'Rent-free Tenures,' No. 13.

'Talooks,' No. 21.

#### BA-FURZUNDAN.

See 'Rent-free Tenures,' No. 30.

#### BANKING HOUSES.

1. Claim of appellant on respondent for 7,158 rupees, balance of account, dismissed; respondent having apparently acted as *gomashteh* of a banker, and not being personally responsible. *Mr. Nowell versus Motee Ram*, 15th July 1805, . . . . . I. 97

2. An acquittance given by a managing partner for the amount of a bill of exchange granted by him on credit, and paid by the house on which it

was drawn, held sufficient, as no collusion appeared. *Jograaj Sahoo versus Ramoo Sahoo* and another, 12th September 1805, . . . . . I. 104

3. On a claim by A against B and his brother C, as late partners of a banking house, for the amount of a debt due by the house, a deed dissolving the partnership, pleaded by B, adjudged collusive (it being dated only six months before the failure) and not allowed to exonerate him. *Gopal Doss versus Shunker Poorce* and others, 29th June 1807, . . . . . I. 193

4. A deposit of money delivered to the head *gomashteh* of a banking house, who also had a distinct house in his own name and that of his son, declared not recoverable from the principals of the house to which the receiver was *gomashteh*, though the latter gave a receipt for the money as *gomashteh mokhtarkar*; it appearing from the evidence that the money had been received and used by the *gomashteh* on his own account, subject to an interest of half per cent. per mensem, and there being no proof that the money was deposited on the credit of the bankers to whom the receiver was agent. *Juggut Rami versus Enayuttoolla*, 24th July 1807, . . . . . I. 204

5. Entry of part payments in the commercial books of a debtor, produced in evidence by his heir, not admitted as sufficient proof. *Musst. Mukhun versus Mohunt Ram Pershad*, 15th July 1808, . . . . . I. 242

6. The principal of a banking house sues to recover a sum lent from the funds of the house, on a bond in favor of the head *gomashteh*—claim adjudged. *Musst. Sectul Bhao versus Emaum Khan* and another, 28th February 1818, . . . . . II. 253

7. Determined that entries in the books of a banker, unsupported by other proof, are not sufficient evidence to prove a debt. *Bunsee Dhur Numdee versus Mirza Mahomed Shureef*, 15th September 1818, . . . . . II. 271

8. The partners of a banking house held conjointly responsible for an undertaking executed in their names by the managing partner. *Gholam Unbia Khan versus Mochee Lal* and others, 6th January 1820, . . . . . III. 1

9. The account-books of a banking house will be found to furnish good evidence of a debt, if the authenticity of the accounts is sworn to by the writer of them, or if their authenticity may be presumed by corresponding entries in the books of any other respectable house. *Ulruack Singh versus Brijpal Das* and others, 1st December 1824, . . . . . III. 417

10. Where no grounds of distrust were apparent, the claim by bankers, for balance of cash account, was awarded on the bankers' books, [to the accuracy of which the *gomashteh* of the firm had deposed,] the defect of vouchers of payment notwithstanding. *Sham Doss* and another *versus Devi Dyal* and another, 21st December 1831, . . . . . V. 154

#### BAZEE-ZUMEEN-DUFTER.

See 'Rent-free Tenures,' No. 8.

#### BEOPAREES.

See 'Golahs,' *passim*.

#### BEQUESTS.

1. According to the *Armenian* law, a verbal bequest of *self-acquired* property to an illegitimate son is good, provided there be no legitimate children; but such disposition of *patrimonial* property is not valid to the exclusion of the legal heir. *Avietick Ter Stephanooos versus Khaja Michael Arratoon*, 8th February 1820, . . . . . III. 1

2. But on proof that the illegitimate son, after the death of his father, virtually acknowledged the right of his heirs, by taking out probate, and benefiting by the will of his great uncle, and by entering into a compromise with his great uncle's daughter for her share of the property, the Court held that the verbal bequest should not avail. *Ibid*, . . . . . III. 1

3. A, a native of France, died in Patna, leaving by will to his brothers (B and C) a sum of which the interest was to be paid to the poor, until they appeared personally and claimed. D, the widow, was made residuary. On a certified declaration of the citizens of the birthplace of A, that B and C had been absent more than 35 years previous to the will, it was ruled that the legacy had lapsed, their death prior to that of the testator being presumed. *Mr. Durand and another versus Mr. J. Boilard and others*, 15th February 1832, .. .. . V. 176

4. A, as next of kin to B, (deceased) had authorized C to proceed on his part in regard to the succession, and receive communication of any will. C, on the power of A, sued for a special legacy to D, A's brother, on the ground of his presumed death. A was nonsuited in the lower courts for defect of kin proved; but the Sudder Dewanny Adawlut, adverting to the terms of the power, on proof supplied, reversed the decisions of the lower courts, and awarded to A, as heir, his share of the legacy, which was treated as intestate property. *Ibid.* .. .. . V. 176

See 'Bequests,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

#### BHURAY.

1. *Bhuray* is charges of remittance formerly allowed to *ammils* by Section 6, Regulation II. 1795. Collector of Benares *versus* Baboo Ulruck Singh, 26th June 1824, .. .. . III. 381

#### BILLS OF EXCHANGE.

1. Claim of respondents for the amount of a bill of exchange, or *hoondlee*, given on credit to the appellant. The parties who granted the bill having given an acquittance on adjustment of accounts, and no collusion or unfairness in the transaction being shewn, judgment given against the claim. *Jograj Sahoo versus Ramoo Sahoo and another*, 12th September 1805, .. I. 104

2. The sellers of a bill of exchange which was not discharged, though accepted by the drawee, held responsible for the amount in the first instance, without reference to the acceptor. *Ishri Pershad and another versus Hurbhuns Lal and others*, 10th December 1822, .. .. . III. 177

3. Held that the seller of a bill of exchange is answerable for the amount in the first instance, when not paid by the drawee; that his having lodged the amount of it in the hands of another banker on account of the purchaser, without the purchaser's sanction, does not exonerate him, and that his not having received back the bill or caused it to be cancelled, affords sufficient presumption, in the absence of proof to the contrary, that such sanction was not obtained. *Nuroopo Naik versus D. Clarke for Dr. Turnbull*, 24th July 1823, .. .. . III. 248

4. The fact of a bill of exchange not being drawn on stamp paper does not invalidate it, as it was drawn at a place not within the limits of the territories of the Hon'ble Company, where no stamps are used. *Ibid.* .. III. 249

5. Held that the negotiator of a forged bill of exchange, receiving the amount thereof, is liable to refund on a suit against him by the drawee; the payees named in the draft being unknown, and the forgery proved. *Mungnee Ram versus Gocul Doss and others*, 11th December 1827, .. .. . IV. 29

#### BILL OF SALE.

See 'Auctions,' No. 6.

'Auction Sales,' No. 1.

#### BLANK PAPER.

See 'Agents,' No. 2.

#### BIRMOOTER.

See 'Rent-free Tenures,' Nos. 9, 10, 26.



## BIRT IJAREII.

See 'Talooks,' No. 8.

## BIRT MUHABRAMINEE.

See '*Birt Muhabraminee*,' Part II. Hindu Law.

## BOARD OF REVENUE.

See 'Auction Sales,' Nos. 1, 3, 5,

'Leases,' No. 11.

'Rent-free Tenures,' Nos. 7, 11.

'Sales,' No. 3.

'Settlement,' No. 2.

'Talooks,' No. 9.

## BONDS.

1. A bond taken from the respondent, a landholder in Ramghur, pronounced null and void, as being indirectly in favor of the *dewan* of the collector of the zillah, in opposition to a special Regulation; and also as having been obtained by undue influence. *Manic Chund Banerjee versus Raja Goroo Nurain*, 19th September 1806, .. .. . I. 165

2. Money lent on a bond by a judge to a native officer on his establishment, held not to be legally recoverable, according to the spirit of Regulation XXXVIII. 1793, the borrower holding lands in other districts, though not in that of which the lender was judge. *Ooduy Churn Chatterjee versus Palmer and Co.*, 14th February 1820, .. .. . III. 14

3. Claim to recover a debt on bond, rejected, it appearing that the stamp paper on which the bond was executed in the year 1813, was of the kind prescribed for use by Regulation VI. 1797, which had been altered by order of the Board of Revenue in 1801. *Bhujoo Singh versus Doonda Singh*, 5th April 1824, .. .. . III. 328

4. Claim by appellant to recover a sum of money on a bond [the bond being given in lieu of principal and interest due on two former bonds] executed in favor of the plaintiff, while acting as guardian and *mokhtar* of the parties bound by them, and the third being also executed under similar circumstances, the Court rejected the claim. *Baboo Ram Ghose versus Kahi Pershad Ghose and others*, 9th February 1825, .. .. . IV. 17

See 'Practice,' No. 106.

See 'Bonds,' *passim*, Part II. Hindu Law.

## BORROWER.

See 'Bonds,' No. 2.

## BOUNDARY.

See 'Jurisdiction,' No. 6.

## BRAMACHAREE.

See 'Bramacharee,' Part II. Hindu Law.

## BROKER.

See 'Agents,' No. 4.

## BROTHER [FULL BLOOD.]

See 'Brother [full blood],' Part II. Hindu Law.

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Part III. Mahomedan Law.

## BROTHER [HALF BLOOD.]

See 'Brother [half blood],' Part II. Hindu Law.

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Part III. Mahomedan Law.

## BROTHER'S SON.

See 'Brother's Son,' Part II. Hindu Law.  
 .. Part III. Mahomedan Law.

## BROTHER'S GRANDSON.

See 'Brother's Grandson,' Part II. Hindu Law.

## BROTHER'S DAUGHTER'S SON.

See 'Brother's Daughter's Son,' Part II. Hindu Law.

## BUNKUR.

1. A purchases at the public sale a portion of a zemindaree. B purchases another portion, besides the *bunkur* of the whole estate. Determined that the *bunkur* purchase of B conveys to him a right over all the forest timber, though growing on the portion purchased by A. The latter, however, from his right to the soil, permitted to clear away the trees and cultivate it, the proceeds of the timber felled appertaining to B. Bijnath Mujmoodar *versus* Deen Dyal Goput, 22nd January 1814, .. .. II. 105

## BURRA THAKOOR.

See '*Burra Thakoore*,' Part II. Hindu Law.

## BUTWARA.

See 'Auction Sale,' No. 18.

## BYA-MOKASA.

See '*Bya-mokasa*,' Part III. Mahomedan Law.

## BYE-BIL-WUFA.

See 'Acknowledgments,' No. 3.

'Agents,' Nos. 1, 12.

'Mortgage and Conditional Sale,' Nos. 1, 2, 4, 25, 26, 41, 42, 49, 54.

## BYE-TULJEEN.

See '*Bye-Tuljeeh*,' Part III. Mahomedan Law.

## CASTE, LOSS OF.

See 'Caste, loss of,' Part II. Hindu Law.

## CEMETERY.

See 'Cemetery,' Part III. Mahomedan Law.

## CHAMPERTY.

1. The appellant having entered into an agreement with a person to give him up half of the estate claimed by him, if the decree should be passed in his favor, in consideration of that person advancing the money required for the costs of suit: the Sudder Dewanny Adawlut held the transaction to be illegal, and ordered the agreement to be cancelled ere they would admit the appeal. Ram Gholan Singh *versus* Keerut Singh and others, 19th January 1825, .. .. IV. 12

2. An agreement to give up a portion [ $\frac{1}{4}$ ] of the property claimed to a person, on condition of his advancing the funds required for costs of suit [the champerty of the law of England] held to be illegal. Baboo Brij Nuraian Singh *versus* Rajah Teknuraian Singh, 29th September 1836, .... VI. 131

3. An agreement to give up 14-16ths of the property claimed to a person, on condition of his advancing the funds required for the costs of suit, held to be illegal. *Musst. Zuhoor-o-nissa Khanum and another versus Ruseck Lal Mitter and others*, 15th August 1840, .. . . . VI. 298
4. The transfer of a claim by sale, *pendente lite*, was held no bar to the adjudication of such claim. *Musst. Jysree Kowur versus Bhugwunt Nuraïn Singh and others*, 24th November 1847, .. . . . VII. 413

## CHELA.

See 'Chela,' Part II. Hindu Law.

## CHOTA NAGPORE.

See 'Usage,' No. 2.

## CHOWDHREE.

1. The civil courts cannot take cognizance of claims for perquisites of the office of *chowdhree*. *Poorun Mul and another versus Khedoo Sahoo*, 28th November 1846, .. . . . VII. 282
- See 'Assessment,' No. 19.
- 'Talook,' No. 15.

## CHUKLEHDAREE.

See 'Assessment,' No. 19.

## CIVIL COURTS.

1. A deed of sale having been produced before a register for the purpose of being registered, he, after a summary enquiry, ordered the sale to be set aside. This order declared to be illegal, the case not having come before him judicially. *Uodan Singh and another versus Muneri Khan and others*, 15th September 1813, .. . . . II. 85
2. Although the country courts cannot directly question a judgment of the Supreme Court, yet they can, upon collateral grounds not before brought forward, control the parties who have obtained the judgment. *Ram Inder Deo Rai versus Roop Nuraïn Ghose and others*, 5th August 1814, .. . . . II. 120
3. The claims of Government to lands included in the decennial settlement are subjected to the cognizance of the civil courts of judicature, and no individual can be legally dispossessed of such lands, unless a decree of court has been given against him. *Government versus Rajesri Dibea and others*, 30th August 1815, .. . . . II. 156
4. An order for the confiscation of an estate passed by the revenue authorities, and confirmed by the executive Government under the Regulations which were in force before those enacted in 1793, is not liable to be set aside or altered by the courts since established. *Government and others versus Musst. Raj Koomarce*, 6th May 1817, .. . . . II. 235
5. The power of altering the public assessment is not vested by the Regulations in the civil courts of judicature; but is reserved exclusively to the Governor General in Council. *Buwany Pershad Chukerbutty and others versus Musst. Coroonia Mye and others*, 7th June 1817, .. . . . II. 242
6. The civil courts are not authorized to interfere with the revenue authorities, or to pass orders, in a summary manner, in matters relating to the settlement of estates. *Collector of Benares versus Sheo Nuraïn Singh and others*, 25th September 1818, .. . . . II. 278
7. The civil courts have no authority to annul by summary order, a public sale of lands made by a collector. *Mirza Kureemoolla Beg versus Baboo Hurruick Chund*, 8th January 1819, .. . . . II. 284
8. The civil courts are restricted by Regulation V. 1799 from interfering with the succession to the estate of a deceased person, without the

institution of a regular civil suit, except in special cases provided for. Bho-  
lanath Doss *versus* Musst. Sabitreea, 16th July 1819,.. .. II. 307

9. Where the extent of interest only was in contest among the co-heirs,  
the civil courts, on the ground of necessity, summarily interfered to define  
the apparent rights, leaving either party the right of trying the question  
by a regular suit. Musst. Burj Iswari *versus* Bindrabun Chunder and  
others, 17th January 1832,.. .. V. 159

## CIVIL DEMISE.

See 'Civil Demise,' Part II. Hindu Law.

## CLAIMANT.

See 'Defaulter,' *passim*.

'Practice,' Nos. 8, 12, 19

## COHABITATION.

See 'Cohabitation,' Part III. Mahomedan Law.

## COLLATERAL KINSMEN.

See 'Collateral Kinsmen,' Part II. Hindu Law.

.. Part III. Mahomedan Law.

## COLLECTOR.

See 'Auction Sales,' Nos. 5, 9, 10, 20.

'Settlement,' Nos. 2, 7, 8.

## COMMUTATION OF PENSION

See 'Pension,' *passim*.

## COMPOSITION FOR HOMICIDE.

See 'Composition for Homicide,' Part III, Mahomedan Law.

## COMPROMISE.

1. A compromise, entered into between the parties while the suit was de-  
pending, set aside, in consequence of one of them not having performed the  
condition of it. Mohunt Ram Pershad *versus* Mohunt Odangr, 5th June  
1807, .. .. I. 188

2. A written engagement of the defendant to the plaintiff (his uncle,)   
which had been the ground of the plaintiff's withdrawing a law suit against  
the defendant, and which contained an allotment of *devutter* lands to the  
plaintiff, on an implied condition (*viz.*, the partition of a joint property  
within a stated period) upheld by the Sudder Dewanny Adawlut, on the  
circumstances of the case, though the condition was as yet unperformed ;  
and judgment passed, providing that the plaintiff might obtain the lands,  
on a partition being carried into effect. Gowree Shunker Canoongoe and  
another *versus* Bijnath Canoongoe, 18th December 1807,.. .. I. 222

3. Two parties execute a deed of compromise [*soolehnameh*]. One of  
them afterwards pleads that fraud and intimidation had been resorted to.  
Such plea, unless clearly substantiated, cannot, neither can a plea of

ignorance of existing facts, excuse the party engaging. *Sri Nurain Rai and another versus Bhya Jha*, 27th July 1812, .. . . . II. 23

4. Pending a suit of A *versus* B, terms of a compromise were settled between the parties, by which they mutually released each other, and B agreed to pay a consideration. No clause to this effect was inserted in the release, signed by A and lodged with C, but on proof of the fact by C, the compromise is enforced, and the consideration awarded to A, costs being made payable in equal shares. *Bireswar Dyal Singh versus Jainath Singh*, 7th April 1831, .. . . . V. 107

5. A sued B for possession of an estate held jointly : and B in answer asserted right to the whole. A's suit is withdrawn on a compromise, by the terms of which A assures to B reversion of the moiety held by him, and generally his entire estate, real and personal. In a subsequent action, brought against B, by the heirs of A, held that the claim as to the moiety of the estate specified, is repelled by the compromise. *Ibrahim Khan versus Syud Mahomed Arab and others*, 19th September 1831, .. . . . V. 143

6. A deed of compromise should be construed liberally : so that where an item of property was left out of a contemporary schedule of properties partible among the litigants, the plaintiff shall have the benefit of the principle of the compromise. *Musst. Birj Iswan versus Bindrabun Chunder and others*, 17th January 1832, .. . . . V. 159

7. A composition, the terms of which have not been fulfilled by one of the parties, cannot be admitted in his favor as proof of the amount of the claim of another party. *Pertab Singh Dugar versus Anund Ram Jani*, 27th April 1837, .. . . . VI. 160

8. If one party do not comply with the conditions of a compromise, the other party is not bound by it. *Ibid.*, .. . . . VI. 160

See 'Acknowledgments,' Nos. 2, 3.

'Practice,' No. 40.

'Review,' No. 3.

'Alienation,' No. 34. Part II. Hindu Law

'Bequests,' No. 6. Part III. Mahomedan Law

## CONCUBINE

See 'Concubine,' Part II. Hindu Law.

.. Part III. Mahomedan Law.

## CONFISCATION.

1. An order for the confiscation of an estate, passed by the revenue authorities and confirmed by the executive Government, under the Regulations which were in force before those enacted in 1793, is not liable to be set aside or altered by the courts since established. *Government and others versus Musst. Raj Koomaree*, 6th May 1817, .. . . . II. 235

2. A collector is not competent to annul a sale of lands, which he considered to have been made under a fictitious name contrary to the Regulations; the power of confiscating in such cases being reserved exclusively to the Governor General in Council. *Debee Dutt versus Collector of Goruckpore*, 21st April 1819, .. . . . II. 294

3. A case of land confiscated on account of a serious affray between the claimants under Section 6, Regulation XLIX. 1793. *Pran Kishen Dutt versus Collector of 24-Pergunnahs*, 6th January 1825, .. . . . IV. 3

4. Government confiscated an estate of which the contracting and ostensible sole owner had been slain in a rebellion, in which his two brothers had participated, and granted it in 1797 to a person in consideration of services

rendered. In 1820, the suit of the son of one brother [confined for the offence] for one-third of the estate, by right of inheritance, declared barred by the confiscation, as well as by long quiet possession of the grantee of Government. *Maheput Singh versus Collector of Benares and another*, 29th May 1830, . . . . . V. 32

5. The Governor General in Council having been moved to confiscate an estate, as having been purchased under a fictitious name in violation of Clause 3, Section 29, Regulation VII. 1799, did not think proper to do so, as there was a doubt as to the extinction of the defaulter's property therein. *Raja Mitterjeet Singh and others versus Baboo Kulahal Singh and others*, 24th April 1832, . . . . . V. 193

See 'Fraud,' Nos. 8, 9.

### CONSUMMATION.

See 'Consummation,' Part III. Mahomedan Law.

### CONTRACTS.

1. Claim by the commercial resident for the sum of 5,924 rupees, due on an engagement of one of the respondents, dismissed; the latter not appearing to have failed in his engagement, and the appellant having deprived him of the means of performing it. *Commercial Resident of Patna versus Adept Singh and others*, 29th April 1805, . . . . . I. 88

2. Claim by A on B for the value of timbers alleged to be his property, sent down to Calcutta for sale, and illegally seized by B. Claim dismissed on proof that the timbers were provided for B, in pursuance of a contract with C and D; and that A, who was only surety for their conveyance to a certain distance, had no legal right or interest in them after their conveyance to that distance. *Heirs of Sham Churn Singh versus Heirs of Omur Singh*, 5th August 1808, . . . . . I. 218

3. A executed an engagement to B, undertaking to furnish 250 *maunds* of silk, at stated periods and in certain quantities, in consideration of receiving advances from time to time; the whole quantity to be delivered on or before a specified day; or on failure thereof subjecting himself to a penalty of 1 rupee for every *seer* remaining undelivered. B had made one advance only, and A had failed in the performance of his contract. On suit of B against A to recover the penalty for every *seer* of silk remaining undelivered, as well as for the balance of the silk remaining due on the advance, the Court of Sudder Dewanny Adawlut held, that according to the spirit of the contract, B was entitled only to recover the penalty on the non-delivery of silk for which an advance had been made. *Surroop Chund Doss versus Mr. Henry Massevk*, 26th October 1813, . . . . . II. 89

4. A enters into an engagement to B, acknowledging himself to be in arrear for advances to the amount of 7,746 rupees, and engaging to furnish silk to that value, or on failure thereof to pay ready money with interest, agreeably to Regulation XXXI. 1793. An action being brought by B to recover the penalty specified in Clause 7, Section 3 of the abovementioned Regulation, the Sudder Dewanny Adawlut held that he was only entitled to recover interest at the rate of 12 per cent. on the balance of the arrear, on the ground of the irrelevancy of the clause and section above specified to the case of A. *Bishen Nath Mitter and others versus Commercial Resident of Commerceilly*, 16th July 1816, . . . . . II. 192

5. The *dewan* of an agent for saltpetre having executed an engagement, making him responsible for the fulfilment of their engagements by the contractors, who had received advances for the supply of that article, they having already furnished security, held that an action by the agent will lie against the *dewan* without reference to the other sureties. *Commercial Agent for Saltpetre at Patna versus Rai Neelmunee Mitter*, 28th May 1827, . . . . . IV. 238

6. A and B purchase property from C, under condition not to sell to any one but C. Ruled that the grant of a *putnee talook* by A and B to D, a stranger, was a violation on their part of the engagement, and as such was set aside. *Mudoo Soodun Sundyal versus Pran Kishen Mitter and others*, 1st March 1836, . . . . . VI. 56

7. In an action for real property under a contract between the plaintiff and defendant, the defendant pleaded violation by the plaintiff of a separate agreement, on the completion of which the fulfilment of the contract was contingent; the agreement was to have been carried into effect within a specified period, which, however, had been exceeded. The *Sudder Dewanny Adawlut* overruled the plea, on the ground that the defendant had availed himself of the conditions of the agreement after the expiration of the period therein specified. *Baboo Judoonath versus Dwarkanath Tagore*, 16th March 1839, . . . . . VI. 247

8. On non-fulfilment of engagements for the cultivation of indigo, the full amount of penalty specified in them is irrecoverable; but, under the provisions of Act X. of 1836, Section 3, the plaintiff, a planter, was declared entitled to recover damages to the extent of the injury sustained. *Mr. S. Mackintosh versus Beychoo Rawut and others*, 5th August 1848, VII. See 'Practice' No. 75.

## CONVEYANCE.

1. An engagement by A, the heir of a deceased Mahomedan, to B, reciting that B shall sue for her share of an estate then under litigation, and that the estate shall become the property of B (B supporting A for life) is not, in Mahomedan Law, valid as a conveyance of property. *Kishwur Khan versus Jewun Khan*, 9th August 1799, . . . . . I. 25

2. A, the manager of a joint *talook* held in his own name, was put in confinement by the servants of the superior zemindar for a balance of revenue; for which, seeing no other mode of discharging it, he executed a conveyance of the *talook* to B, the zemindar's *mokhtar*, voluntarily, but without any express authority from the other sharers; who however allowed B to hold possession undisturbed for 10 years. In a suit after this period against B, for the recovery of this *talook*, on the ground that the conveyance was void, as having been obtained by duress, and executed only by one of the sharers, the *Sudder Dewanny Adawlut*, in conformity with the opinion of their *pundits*, determined that the title of B under the conveyance is good. *Pran Nath Doss and others versus Kali Shunker Ghosal*, 29th August 1801, I. 45

3. A conveyance executed during mortal sickness set aside, on failure of proof that the person who executed it was of sound mind at the time. *Radha Munee Dibeh versus Sham Chunder and another*, 27th September 1804, I. 85

4. Claim by the father of the appellants to recover certain lands sold to the respondents by one of the claimant's sons, on the plea that the act was not authorized: the contrary appearing from circumstantial proof, judgment given against the claim. *Sheodial Rai and others versus Dhumput Rai*, 24th February 1806, . . . . . I. 128

5. Defendant having admitted the right of plaintiff's mother to certain lands, pleaded a right to them under an alleged conveyance from her to himself; and having failed to prove this conveyance, judgment given for the plaintiff. *Tejchund versus Jug Mohun Rai*, 16th September 1808, . . . . . I. 257

6. For a consideration received, A engages to effect a release of lands mortgaged by him to B, and make them over to C, or in default of his effecting the release of the lands in question, to make over other lands of equal value. A fails in effecting the release: C claims other equivalent lands, or (in a supplementary plaint) to recover the consideration. Principal and interest of the sum advanced by C decreed, but no lands, the

engagement not being sufficiently specific to maintain a claim for lands. Raja Greesh Chunder *versus* Bykunt Pal Chowdry and another, 24th February 1813, .. .. . II. 48

## COPARCENERS.

Alienation by—See 'Alienation,' Nos. 1, 2, 3, 4, 5, 6. Part II. Hindu Law.

## COSTS.

1. The appellant having denied that the respondent was a son, or heir of his father, was not allowed his costs, though judgment was passed in his favor; the costs in all the courts were made payable by the parties respectively. Gholam Hussam Ali *versus* Zeinub Beebee for Hummut Ali, 20th July 1801, .. .. . I. 48

2. Order for costs of suit to be paid by the successful party reversed. Meer Abdool Kureem *versus* Fakhro-omssa Begum, 2nd August 1820, III. 44

3. Held that the institution of a suit for the recovery of a debt before the period specified for payment, is not a sufficient ground for depriving the creditor of interest after the debt has become due, though sufficient for refusal of costs, or for nonsuit. Mohun Runjeetgir *versus* Kunhya Lal and others, 12th February 1821, .. .. . III. 68

4. An award greater than the sum sued for being given in the zillah court by a decree which was afterwards reversed in the provincial court, the costs in the latter made payable by the losing party only on the amount originally sued for. Ram Pershad Awustee *versus* Udaroo, 12th December 1827, .. .. . IV. 293

5. Costs (pleader's fees) adjudged at one-fourth,—a mere petition in lieu of the answer not being held to conclude the requisite pleadings as per penultimate proviso of Clause 1, Section 31, Regulation XXVII. 1814. Muba-Rance Kunnul Komaree *versus* Sreenath Sreedhur Narain and another, 16th June 1817, .. .. . VII. 345

6. Decisions annulled as award of costs was out of proportion to the sum decreed, and no reason given for the same. Deyal Singh *versus* Buktawur Panday, 13th July 1817, .. .. . VII. 353

7. Costs in the lower court remitted to a defendant who had been charged with them there, although exonerated from plaintiff's claim; but costs of special appeal charged against him, as, under the circumstances, he should have applied to the lower appellate court for review of judgment. Rajah Radhakunth Bahadoor *versus* Randhun Holdar, 12th February 1818, .. .. . VII. 411

8. Respondents unnecessarily filing separate replies to separate appeals, must pay their own expenses in regard to them. Musst. Hursomdree and others *versus* G. Lamb and others, 9th March 1818, .. VII. 416

See 'Actions,' No. 26.

'Auction Sales,' No. 37.

'Damages,' Nos. 3 and 4.

'Ejectment,' No. 4.

'Practice' No. 108.

## COSTS IN CRIMINAL CASES.

See 'Practice' No. 89.

## COURT OF WARDS.

1. The Court of Wards on the report of its agent, the managing collector, caused part of its ward's estate to be sold at public auction, to levy means to satisfy judgment and other debts. The Court of Sudder Dewanny Adawlut ruled that this was within the discretion of the Court of Wards,



under Regulation X. 1793, and that the sale could not be disturbed on grounds applicable to other public sales. *Nund Kumar Rai and Government versus Rance Huree Pria and others*, 6th September 1832, . . V. 233

2. A, a female, succeeded to the share of a joint estate, managed by the Court of Wards both before and after her succession. She alienated her share to B, and repelled his action by pleading her inability to alienate without leave of the Court of Wards. Plea disallowed, because no enquiry per Regulation X. 1793 had been made by the revenue authorities, as to her qualification or disqualification. *Jan Khatoon versus Khajeh Aleemoolla*, 4th December 1832, . . . . . V. 240

3. Hence it may be gathered that the alienation by a female ward, whom the Governor General under Section 2, Regulation X. of 1793, after report, might not declare competent, is invalid. *Ibid*, . . . . V. 240

### COUSINS.

See 'Cousins,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

### CREDITOR.

See 'Judgment Creditor.'

### CUTTACK.

See 'Limitation,' Nos. 11, 29.

'Usage,' No. 11, Part II. Hindu Law.

### DAKHILEHS.

See 'Damages,' Nos. 1, 2, 6.

### DAMAGES.

1. In a suit by a dependent *talookdar* against a zemindar, for having refused him receipts [*dakhilehs*] on his payment of several years' rent, the zillah court, under Section 63, Regulation VIII. 1793, adjudged to the plaintiff damages equal to double the amount paid. This judgment was reversed, on the ground that the plaintiff demanded receipts for a fixed rent, without any title on his part being proved, or appearing probable. *Lala Govind Lal versus Sri Nurain Rai and another*, 31st July 1810, . . . I. 301

2. The plaintiffs sued, as dependent *talookdars*, to obtain from the zemindar receipts for rent paid by them. The zemindar was willing to grant plaintiffs' receipts as *ijarehdars*, but not as *talookdars*. The Court, on proof that they were *talookdars*, decreed that the zemindar should grant them receipts as such. The cause of refusal to grant receipts being a dispute concerning the tenure, the provisions of Section 63, Regulation VIII. 1793, were not considered applicable to the case. *Sheo Nurain Chowdry and others versus Kowla Kaunt Gosayn and others*, 25th January 1817, . . . . . II. 221

3. The plaintiff suing to recover a sum of money taken from him under an award, the zillah judge decreed the sum claimed, and damages and costs under Section 6, Regulation XXVIII. 1803, which plaintiff had not sued for. This part of the decree was reversed, and costs made payable by the losing party only on the sum originally sued for. *Ram Pershad Awustee versus Udaroo*, 12th December 1827, . . . . . IV. 293

4. A, an officer of police, illegally (though for a short time) arrested B, and offered to strike him. On B's suit for damages, laid at 10,000 rupees, the provincial court awarded 100 rupees' damages, and costs on the sum sued, amounting to 637 rupees. The *Sudder Dewanny Adawlut* decreed that the defendant should only pay costs in proportion to the damages awarded. *Munceroodcen versus Jai Sunkur Sundial*, 27th August 1832, V. 229

5. A sued to recover a given sum as profits of a defined quantity of land. The decree of a lower court, awarding a less sum arbitrarily taken as damages, affirmed in the *Sudder Dewanny Adawlut*. *Birj Nath Baboo versus Rughoonath Ojha*, 30th August 1832, . . . . . V. 231

6. Under Section 63, Regulation VIII. 1793, A brought an action against B for having refused to give him receipts [*dakhilehs*] for rent paid. The suit was dismissed with costs, because no dishonest intention was proved against B, and because A had not brought the suit within one year from the date on which the action originated. *Ram Nuraun Mookerjee versus Sumbhoo Chunder Mookerjee*, 14th April 1835, . . . . . VI. 26

7. Damages were awarded against a police *darogha* for the illegal search of the plaintiff's house in a case of theft. *Munceroodeen Darogha versus Hurree Pershad Mundul*, 20th August 1835, . . . . . VI. 39

8. In an action for damages, preferred by an uncovenanted judicial officer, against a party who had charged him with corruption in the discharge of his official duty, the *Sudder Dewanny Adawlut* confirmed the decree of the lower court, which awarded to the plaintiff damages to the amount of 1,000 rupees. *Bhyrhub Chunder Bose versus Joseph Thomas*, 4th August 1836, . . . . . VI. 97

9. The plaintiff agreed to receive a fixed sum from the defendant as damages for an assault and false imprisonment, which sum the defendant failed to pay : the plaintiff sued for damages in excess of the amount agreed between the parties. The *Sudder Dewanny Adawlut*, under the circumstances, gave judgment for the plaintiff for the amount he had originally consented to receive, together with all costs of suit. *Muthoor Nath Mulhe versus Mr. Marshall Collyer*, 31st December 1839, . . . . . VI. 275

10. It having been proved that one of the defendants, a zemindar, had instigated a riotous attack on the zemindaree *cutcheree* of the plaintiff, the *Sudder Dewanny Adawlut*, on the suit of the latter, awarded to him the value of the property plundered, and a reasonable sum as damages. *Musst. Sidhuree Debea and others versus Mr. J. P. Wise*, 30th November 1843, . . . . . VII. 136

11. An acquittal on a criminal charge is not a sufficient plea to a civil action for damages, grounded on the same transaction. *Musst. Sidhuree Debea and others versus Mr. J. P. Wise*, 30th November 1843, . . . . VII. 139

See 'Actions,' No. 14.

'Embankments,' *passim*.

#### DATE.

See 'Deed,' No. 16.

#### DAUGHTERS.

See 'Daughters,' Part II. Hindu Law.

" Part III. Mahomedan Law.

#### DAUGHTER'S SONS.

See 'Daughter's Sons,' Part II. Hindu Law.

" Part III. Mahomedan Law.

#### DAUGHTER'S SON'S GRANDSON.

See 'Daughter's Son's Grandson,' Part II. Hindu Law.

#### DAY OF SALE.

See 'Auction Sales,' No. 14.

DEBTS.

1. The original amount of a loan is not forfeited in consequence of a stipulation of illegal interest; nor is a bond taken through adjustment of a debt bearing such interest held to be an attempt to elude the Regulations, and obtain interest upon interest, which would involve forfeiture of the principal. *Rai Balgovind versus Sheikh Gholan Ali*, 24th June 1805, . . . I. 93
2. Partners in a banking house not exonerated from the amount of a debt due by the house, by a deed dissolving partnership, circumstances appearing to make the transaction collusive. *Gopal Dass versus Shunker Pooree and others*, 29th June 1807, . . . . . I. 193
3. Claim by the heirs of Nuwab Nujuf Khan, against the estate of General Martine, to recover an estate assigned in liquidation of a debt, adjudged, on an adjustment of accounts, adopted by the Sudder Dewanny Adawlut, shewing the debt to have been liquidated. A further action reserved to the claimants for the balance of accounts due to them. *J. Queiros versus Khodeja Sultan Begum and others*, 20th July 1807, . . . I. 199
4. Judgment having been given for the recovery of a debt alleged to have accrued on the estate of a minor, against a person who had voluntarily become his security, and which debt the minor denies having been due [he not having been cognizant of the suit.] held not to be sufficient to establish the reality of the debt, and consequently not to make it necessary for the minor to refund the amount; with a reservation however that if, on production of accounts, it could be proved that the money was in reality advanced for the estate, the security would be entitled to credit for it. *Oochubannud Gosayn versus Hurinder Nuran Bhoop*, 29th April 1808, . . . . . I. 234
5. Acquittances of a debt, granted conditionally, are not of avail if the condition be not fulfilled. *Raja Jye Perkas Singh versus Jog Ray Sahoo*, 10th September 1811, . . . . . I. 343
6. The manager of an estate borrows money for the payment of arrears of revenue due to Government, giving a bond in the name of two proprietors, one of whom [since dead] had possession at the time: determined that the manager is personally responsible in the first instance, with right of recovery from the heirs of the deceased proprietor of the estate, on whose account the loan was contracted. *Gour Kishwur Acharj versus Sheo Buksh Singh*, 29th May 1813, . . . . . II. 64
7. A person officiating for a minor in the capacity of *tukseeldar*, and borrowing money in his own name to discharge the Government revenue, will be solely responsible in the first instance for the re-payment of it, even after his removal from office and the minor's succession to it; but, on an adjustment of accounts, he is entitled to be reimbursed by the latter, should the debt appear to have been really incurred on his account, and *bona fide* chargeable to him. *Neek Singh and another versus Anoopun Dass and another*, 22d May 1815, . . . . . II. 154
8. Part of a debt having been realized by process of the Supreme Court, and the action there having been discontinued, it is still competent to the claimant to sue for the remainder in a provincial court, though the claim to be reimbursed the costs of suit incurred in the former court will be rejected. *Munohur Lal versus Ram Nuran Ghose*, 16th January 1821, . . . III. 66
3. In a suit instituted against a minor landholder and his guardian jointly, to recover rents unduly levied during the minority of the former, held that the latter only is liable in the first instance, notwithstanding the former may have attained to majority before the final decision of the suit, with liberty to sue for reimbursement if he think fit. *Jowahir Singh versus Chunder Nuran Rai and others*, 26th March 1821, . . . . . III. 38
10. Money having been borrowed to discharge arrears of public revenue, by a person erroneously registered as proprietor of an estate, the

rightful proprietor, on coming into possession, will be held liable for the debt : and this is conformable to Hindu law. *Gopee Churn Bural versus Lukhee Eswari Dibia and another*, 5th June 1821, . . . . . III. 93

11. A sale made by a debtor to his surety having been set aside as extorted by violence, the Court will nevertheless compel the debtor to pay to his surety the amount [principal and interest] which had been borrowed on the credit of the surety, declaring at the same time that the latter should be responsible to the original creditor. *Mullic Ahmad Khan versus Pudum Singh and others*, 11th June 1822, . . . . . III. 156

12. Claim to recover a debt under a bond dismissed; the Court not believing the evidence of the witnesses of the plaintiff, chiefly owing to their want of respectability. *Sydam Salehoomissa Chowdrayn versus Bhoobun Mohun Lahari and another*, 21st September 1825, . . . . . IV. 90

13. In an action for debt, the borrower pleads payment, and produces receipts on paper stamped 6 years after the date of their execution; held that such documents were inadmissible, and claim adjudged for this and other reasons. *Kishen Surrun Chukerwutty versus Ram Kishen Geer*, 26th January 1826, . . . . . IV. 108

14. A *surherakar*, or manager, in the management of certain property alleged to belong to a minor, contracted a loan to pay off debts originally incurred on conditional sale of such property by A, the former proprietor. On the suit of B, claiming to inherit from A, a decree was passed in his favor and against the rights of the minor. Held that, under such circumstances, B was responsible for the re-payment of the loan, it having been satisfactorily proved that the debt was incurred by the manager entirely for the benefit of the property. *Raja Sahibdeen Khan versus Birj Raj Singh*, 11th January 1836, . . . . . VI. 17

See 'Debts,' *passim*, Part II. Hindu Law.

„ Part III. Mahomedan Law.

'Inheritance,' under the Hindu Law, No. 96.

## DECENNIAL SETTLEMENT.

See 'Assessment,' Nos. 1, 2, 22.

'Auction Sale,' Nos. 24, 26, 27.

'Civil Courts,' No. 3.

## DECISIONS

A suit was remanded because the requirements of Act XII. of 1843 had not been fulfilled. *Ram Ram Beish versus Birjmohun Dutt*, 26th March 1845, . . . . . VII. 201

## DECREES.

1. A decree of the provincial court, in a suit for landed property, passed during the appeal to the *Sudder Dewanny Adawlut* of another cause relating to the same property, and concealed from the knowledge of the *Sudder Dewanny Adawlut*, cannot be affected by the eventual decision of the latter Court. *Duljeet Singh versus Sheo Munook Singh*, 7th September 1802, . . . . . I. 61

2. In a suit by the widow of a *talookdar* for possession of the *talook* held by her husband, under an unexecuted decree in her favor passed by the *Calcutta Dewanny Adawlut* in 1785, it appeared that a prior claim which she had preferred before the *khulsa*, in 1773, was dismissed on trial of its merits. On the ground, therefore, that the decision of the *khulsa* was a judicial sentence, precluding the question being again agitated, the

judgment of 1785 was pronounced illegal by the Sudder Dewanny Adawlut, and the claim dismissed. Hurryhur Chowdry and another *versus* Rungoo Bebee, 21st August 1810, . . . . . I. 307

3. Appellant's claim to an estate not precluded from cognizance by incidental judgment against him in another suit. Sheikh Bhukaree *versus* Imamu Bukshi, 5th November 1811, . . . . . I. 355

4. In a suit of A against B for lands, B pleaded two previous decrees in his favor as barring the claim of A; but, as the decision in those cases did not affect the merits of the present action, the plea of B was overruled. Buldeo Sircar *versus* Raja Nur Nuram Rao, 4th March 1815, . . . . . II. 49

5. A judgment given against the dependant of a landed proprietor, who had taken a farm of his lands by the desire of the proprietor, not held to be conclusive against the latter, as the suit was not defended under his directions, or with his knowledge. Koonwur Indurjeet Chowdry *versus* Radch Kishen, 7th February 1817, . . . . . II. 223

6. A claim having been preferred by the sister, against the widow of a deceased Mussulman, for half the property left by him, which was finally adjudged to be the widow's right in lieu of dower; and 21 years after that decision, the same plaintiff brought an action against the same defendant for the same property, on the plea that, even supposing the dower to have amounted to the sum claimed, she had realized the full amount from the profits of the estate, it was held that the claim was inadmissible. Sahib Jan Khatoon *versus* Dhanut Beebee and others, 7th February 1820, . . . . . II. 12

7. The Sudder Dewanny Adawlut having decided that no duress was used by A in a suit between A and B, it is not competent to the courts below to give judgment in favor of C against A, on the ground of the proof of such plea. Sohawun Lal and another *versus* Ujab Rai, 26th July 1820, . . . . . III. 41

8. The courts are not competent to decide a new suit contrary to the provisions of a former final decree, relative to the same property, the merits of that decree cannot be gone into. Rao Ram Sunker *versus* Rancee Tarnee Dhim, 25th April 1826, . . . . . IV. 146

9. Held that the courts are not at liberty to question the merits of a final decision of an authority having competent jurisdiction, whether an allegation of such decision being contrary to law, or wrong as to the merits. The decisions here alluded to were passed by the Patna Council in 1777, and by the Patna City Court in 1796. Futeh Yab Khan *versus* Khajeh Aboo Mahomed Khan and others, 17th April 1826, . . . . . IV. 137

#### DECREE FOR PROPERTY NOT SUED FOR.

See 'Practice,' Nos. 15, 31, 36, 41.

#### DEEDS.

1. The Sudder Dewanny Adawlut maintain a title to lands obtained under a deed of composition for homicide. Nunda Singh *versus* Meer Jafir Shah, 10th April 1794, . . . . . I. 4

2. A deed admitted, in conformity with the opinion of the law officers, on the testimony of the *kazee* whose seal is affixed to it [not his signature] and of the *moonshee* who drew it up; though there were no subscribing witnesses. Musnud Ali *versus* Khoorshed Banoo, 14th August 1801, . . . . . I. 52

3. The validity of a deed upheld, to which a surreptitious addition, purporting that it was void, had been made by the subscribing party. Pudum Nath Rai *versus* Rancee Jugdisree, 2d May 1806, . . . . . I. 132

4. A deed set aside to which the subscriber's signature had been obtained by undue means. Shunker Dutt Ojah and another *versus* Musst. Soonaeen Ojhaen, July 1806, . . . . . I. 147

5. Judgment of the lower courts in favor of the claimant of certain lands, reversed by the Sudder Dewanny Adawlut on documents proving the title of the father of the party in possession, not discovered until after the decree of the provincial court. Nub Kishen Sem *versus* Kishen Mohun Sem, 1st September 1806, . . . . . I. 159
6. An *umaut-namch*, or deed of trust, not produced for a period of 20 years, and no claim made on the strength of it by the party in whose favor it was alleged to have been executed, rejected as a fabrication. Hinchu Singh and another *versus* Dulcha Singh, 1st August 1808, . . . . . I. 245
7. An *ikranamch*, or written acknowledgment, alleged to have been executed by a female, not admitted in evidence of a conveyance; it being in direct opposition to strong circumstantial evidence. Raja Tej Chund *versus* Jug Mohun Rai, 16th September 1808, . . . . . I. 257
8. A deed cannot be set aside on the plea of ignorance by the contracting party. Sri Nuram Rai and others *versus* Bhiva Jha, 27th July 1812, II. 30
9. A deed having been declared inadmissible by a zillah decree, from which an appeal was preferred (but subsequently withdrawn by *razee-namch*) held that the production of that decree was not sufficient to preclude enquiry into the authenticity of the deed in a subsequent suit. Debnath Mymoodar *versus* Kishen Pershad Goswain, 12th January 1824, . . . . . III. 200
10. A deed of gift, purporting to have been executed by the deceased proprietor, set aside, as it had not been produced in a former action brought by the widow against the present claimant, when, on his plea of adoption proving untenable, a deed had been filed in court, by which he admitted her right to the succession, which deed, although now disclaimed by him, had been duly recorded, and carried into effect without opposition at the time. Chundum Koonwaree *versus* Sheo Rutna Singh and others, 22d December 1823, . . . . . III. 275
11. Claim of the legal heir adjudged, in opposition to an alleged deed of gift, it being doubted whether the deed was executed at all, or whether, at the time of its execution, the donor, from extreme old age, was in his sound mind. Ram Nuram Dutt and others *versus* Musst. Subhasee and others, 26d June 1824, . . . . . III. 377
12. An *ikranamch*, or written acknowledgment, by the defendant to the plaintiff, that the latter is proprietor of a portion of the estate belonging to the former, held to be good evidence of the transfer, though no consideration was proved; an attempt by the defendant to prove a counter *ikranamch* by the plaintiff having failed. Rancee Indrance *versus* Ram Koomar Burn, 21st July 1824, . . . . . III. 392
13. Claim to set aside a deed of sale dismissed; but the right of a third party declared not to be affected by the decree confirming the sale. Mumsa Rai *versus* Dhan Singh and others, 21st March 1826, . . . . . IV. 38
14. Deeds of release, founded on an invalid deed of assignment, are not binding. Musst. Khanum Jan *versus* Musst. Jan Beebee and others, 13th February 1827, . . . . . IV. 210
15. A *razee-namch* and admission of plaintiff's claim, executed by her aunt, turning on a deed of her grandfather, which had been declared invalid, were held to be legally inoperative. Mahomed Yacoub *versus* Wujehoomssa, 28th January 1833, . . . . . V. 264
16. A certain instrument, the date of which appears stated according to the *Sambat* era as far as regarded the *day of the month*, while the *year* mentioned is the *Fuslee* year, being declared invalid in consequence of the English date of the sale of the stamp paper being ostensibly a day posterior to the date of the engrossment of the said instrument; the Sudder Dewanny Adawlut see reason to presume that the person who engrossed the document intended to insert the *Sambat*, instead of the *Fuslee* year, and having, on

comparison, found that such alteration renders the dates of the instrument correct, and the evidence of its execution appearing to be satisfactory, they finally declare it valid. *Agund Rai versus Rughoonath Sahee*, 14th July 1835, . . . . . VI. 32

17. No claim can be founded on a document judicially declared to be false and invalid, even against the party producing it and asserting its genuineness and validity. *Beebee Mariam Hume versus Carapiet Archbishop* and another, 26th August 1835, . . . . . VI. 39

18. A *solehnameh*, or deed of compromise, conveying right to certain lands, and though silent as to the mesne profits, was held to imply a right to the latter also. *Musst. Bibi Imamum and others versus Bibi Mujoo* and another, 14th June 1847, . . . . . VII. 341

19. Documentary proofs should not merely be exhibited, but actually filed with the record, and objections of parties affected by them taken. *Ramsuroop Panday versus Sheik Inndad Ali and others*, 5th July 1847, VII. 351

See 'Deeds,' *passim*, Part II. Hindu Law.

„ Part III. Mahomedan Law.

### DEFALCATION.

See 'Auction Sales,' No. 15.

'Security.'

### DEFAULT.

1. Held that the failure of the plaintiff to reply to the answer of one defendant, within the prescribed time, while the case was proceeding without neglect or default in regard to other defendants, does not constitute the neglect involving dismissal of the action under Act XXIX. 1841. *Issurehunder Surma versus Beemoolla Debba*, 7th February 1846, . . . . . VII. 226

2. Neglect of an order issued in the progress of a suit, which is otherwise carried on, is not a default under Act XXIX. of 1841. *Gunganuram Mookerjee versus Dhummonce Dassee and others*, 10th May, 1847, . . . . VII. 290

### DEFAULTER.

1. Land supposed to belong to a public defaulter, being attached and about to be sold in satisfaction of the dues of Government, should another person claim the property, it is sufficient that previous to the sale a summary enquiry be made into the merits of the claim. A formal investigation is not in the first instance necessary; but it is at the option of the claimant to institute subsequently a regular suit, and if his title be proved, the sale will be void, and the property adjudged to him with costs. *Government and others versus Musst. Kishoree*, 25th November 1815, . . . . . II. 162

### DEFENDANTS.

See 'Practice,' Nos. 13, 46.

### DEHYEK.

1. *Dehyek*, an allowance of 10 per cent. on the *aumil's* profits and charges of collection, formerly allowed under Section 6, Regulation II. 1795. *Collector of Benares versus Baboo Ulruck Singh*, 26th June 1824, . . III. 381

### DEPENDANTS.

See 'Agents,' *passim*.

## DEPENDANT TALOOKS.

See 'Assessment,' Nos. 1, 5, 6, 7, 13.  
 'Auction Sales,' No. 7.  
 'Talooks,' Nos. 11, 12.

## DEPOSIT.

See 'Auction Sales,' No. 14.  
 'Limitation,' No. 66.

## DEWAN.

1. The *dewan* of a subordinate commercial factory held responsible for the sum of 10,000 rupees, which he had entered in his books as received from the principal factory, although such sum was never sent. *Musst. Ram Sona versus Mr. Geo. Chester*, 27th April 1822, . . . . . III. 169  
 See 'Bonds,' No. 1.  
 'Contract,' No. 5.

## DEWANNY GRANT.

See 'Rent-free Tenures,' Nos. 3, 5, 6, 15, 20, 21.

## DEWUTTER.

See 'Rent-free Tenures,' Nos. 3, 25.

## DISMISSAL ON DEFAULT.

See 'Appeals,' Nos. 3, 5, 7, 8, 14, 16, 19.

## DIVISION.

See 'Auction Sales,' No. 18.  
 'Settlement,' No. 5.  
 'Gift,' No. 15, Part III. Mahomedan Law.

## DIVORCE.

See 'Divorce,' Part III. Mahomedan Law.

## DOCUMENTS.

See 'Practice,' No. 3.

## DOWER.

See 'Dower,' Part III. Mahomedan Law.

## DRAWEE.

See 'Bill of Exchange,' Nos. 2, 3, 5.

## DURESS.

1. After a *razeenamah* had been filed, the plaintiff pleaded that execution thereof had been forced; but, though repeatedly desired to prove his assertion, failed to do so. The provincial court dismissed the suit, and the Sudder Dewanny Adawlut confirmed the decision. *Sheikh Dahoo versus Collector of Purneah for the Court of Wards*, 2d July 1825, . . . . . IV. 80



2. An admission obtained in the zillah court from a party who appeared personally, and was unduly pressed by the judge, was treated as null. *Surroop Chund Sircar versus Raja Greeshchunder and others*, 15th August 1831, . . . . . V. 140

See 'Conveyance,' No. 2.

'Debts,' No. 11.

'Decrees,' No. 7.

### DUTTACA.

See 'Duttaca,' Part II. Hindu Law.

### DWYA MUSHYAYANA.

See 'Dwya Mushyayana,' Part II. Hindu Law.

### EJECTMENT.

1. Claim by appellant to recover possession of certain lands from the respondent, under Regulation XLIX. 1793, on plea of forcible ejectment. On proof of the fact, summary judgment for his being reinstated by the zillah court confirmed, with permission to the respondent to try the question of right in a regular suit. *Ram Dhun Rai versus Bishen Nath Bose*, 7th February 1806, . . . . . I. 125

2. In a summary suit for possession under Regulation XLIX, 1793, the question of right was taken up by the Sudder Dewanny Adawlut at the express desire of the parties; and on proof of right resting with the respondent, the alleged dispossessor, judgment given in his favor. *Petumber Bhuttacharj versus Ranjee Bunojah*, 3d July 1807, . . . . . I. 195

3. On demand by a farmer on two under-renters, for possession of lands for which they were in balance at the end of the first year of a lease which had been granted to them, and refused to give up, summary judgment for the farmer by the zillah court under Regulation VII. 1799, confirmed by the Sudder Dewanny Adawlut. *Jugesser Mustoofee versus Sham Mohun Rai and another*, 3d August 1807, . . . . . I. 206

4. The claims of Government to lands included in the decennial settlement are subject to the cognizance of the courts of judicature, and no individual can be legally dispossessed from such lands, unless a decree of court have been given against him. Costs against Government in a case in which this principle had not been observed; and the plaintiffs, who had been irregularly dispossessed, were at the same time allowed the full benefit of the rule of limitations for the cognizance of civil suits. *Government versus Rajesree Dibia and others*, 30th August 1815, . . . . . II. 156

### ELECTION.

See 'Election,' Part II. Hindu Law.

### EMBANKMENTS.

I. The respondent repaired an embankment whereby the lands of the appellant were laid under water. On the suit of the latter, it appearing that the embankment was not in existence when the parties purchased their estates, the Sudder Dewanny Adawlut decreed that the embankment should be thrown down, and awarded damages to the appellant. *Abeh Nundee Mustoofee versus Doorga Doss and another*, 15th January 1825, . . . . . IV. 8

# EMBEZZLEMENT.

1. Claim for a sum of money alleged to have been embezzled by the ancestor of the respondent from the ancestor of the appellant. Claim dismissed, the alleged embezzlement being disproved. *Oditnuraia Singh versus Casinath and others*, 24th April 1807, .. .. I. 183

2. In a suit for money and property embezzled, the provincial court, in addition to a refund of the amount embezzled, adjudged the payment of one-third of the amount to be made by one of the defendants as a fine for his connivance; but, on appeal preferred by him, the Sudder Dewanny Adawlut reversed this order as being unwarranted by the Regulations, and inconsistent with the practice of the civil courts. *Gokul Pershad versus Sunsara Mull*, 13th November 1827, .. .. IV. 268

See 'Auction Sales,' Nos. 7, 33, 34.  
'Security,' Nos. 2, 5, 6, 8, 9, 11, 12.

# ENAAM.

See 'Enaam,' Part III. Mahomedan Law.

# ENDOWMENTS.

See 'Endowments,' Part II. Hindu Law.  
" Part III. Mahomedan Law.

# ENGAGEMENTS.

1. Appellant having entered into an engagement with a person to give him up half of the estate claimed by him, if a decree should be passed in his favor, in consideration of that person's advancing the money required for the costs of suit, the Sudder Dewanny Adawlut held the transaction to be illegal, and ordered the agreement to be cancelled ere they would admit the appeal. *Ram Gholam Singh versus Keerut Singh and others*, 19th January 1825, IV. 12

See also note, .. .. V. 137

2. With a view to procure the execution of a decree passed in favor of the respondents, but which had been appealed to the King in Council, the appellant's father became security for the ultimate award, in consideration of which he obtained from the respondents an engagement to pay to him the sum of 20,000 rupees, which sum was stated to have been borrowed from a third person on the credit of the appellant's father. The respondents failing to pay this sum within the time stipulated in their bond, the appellant was served with a notice that he would be sued for the same in the Supreme Court, whereupon he paid the amount. Held, that in this case the respondents were liable to the appellant for the amount so paid by him, together with the charge for the notice, and this without reference to the fact whether the amount of the bond had been actually realized by the appellant's father or not. *Omachurn Banerjee versus Lukhee Nurain and others*, 3d October 1827, .. .. IV. 263

See 'Agents,' Nos. 2, 11, 16.  
'Auction Sales,' No. 21.  
'Contract,' Nos. 1, 3, 4, 5.  
'Deeds,' No. 8.  
'Mortgage,' Nos. 21, 24, 25, 41.

## ENGLISH LAW.

See 'Advocate General,' Nos. 1, 4.  
'Practice,' No. 123.

## ESCHEATS.

1. According to the Portuguese law of inheritance, one moiety of the estate of the husband devolves on his death on his widow, and the other moiety on his next of kin. According to this law, a distribution was ordered to be made of the estate of a deceased person; but his wife dying, and several claims to her moiety being preferred, it was subsequently discovered that the deceased's husband was a British subject. As he left no heirs, [the relations of a mother, or of a wife, not being heirs to real property according to English law,] decreed that the estate should revert to Government, by whom it was originally granted to the father of the deceased. *Joanna Fernandez versus Domingo DeSilva* and another, 12th February 1817, . . . . . II. 227
2. Had the case been decided according to the law of Portugal, the decision would have been the same; as by a special law of Portugal, termed the *mental*, and applicable to the case, all grants made by the crown, and sub-grants by any great donees of the crown, become escheats, on failure of the legitimate descendants of the original donee; relations not in the direct line being excluded. *Ibid*, . . . . . II. 230 Note.

## ESTOPPEL.

See 'Estoppel,' Part III. Mahomedan Law.

## EUROPEANS.

See 'Accounts,' No. 3.  
'Advocate General,' No. 1.  
'Private Sale,' No. 6.

## EVASION.

See 'Debt,' No. 1.  
'Fraud,' No. 11.  
'Interest,' Nos. 1, 12, 20, 33.

## EVIDENCE.

1. The evidence of a single witness, supported by circumstantial evidence, is sufficient to prove a compromise. *Bireswur Dyal Singh versus Jai Nath Smgh*, 7th April 1831, . . . . . V. 107
2. In the case of an appeal, defended by the assignees of an insolvent firm, appointed under 9 Geo. IV., cap. 73, the evidence of one of the partners was received in appeal. *Sooruj Nurain versus Assignees of Estate of Palmer and Co.*, 5th March 1833, . . . . . V. 271
3. An action for possession of real property on a sale absolved but in reply to which defendants pleaded a conditional sale. The plaintiff could not produce a bill of sale, but the return by defendants to plaintiff of the *ikrarnamohs* drawn out when the sale was only conditional, held to be conclusive proof of an unconditional sale. *Sheikh Dhunnoo Shalgur versus Sheikh Boorhan*, 19th September 1844, . . . . . VII. 181

4. An act proved in a criminal court being made the ground of a civil action, evidence offered in its disproof cannot be refused by the civil courts. Henry Christian *versus* James Parker, 19th November 1845, .... VII. 216

5. Neglect to produce evidence in a lower court, is no bar to hearing of appeal on evidence filed prior to such neglect. Rambukhsh Race *versus* Sheo Bukhsh Race and others, 9th June 1847, .. .... VII. 312

6. It is discretionary with a judge to act on evidence rejected by his predecessor. .. .. Ibid.

7. The record of another case may be referred to; but copies of the necessary papers and evidence should be taken from it and filed with the case under investigation. .. .. Ibid.

8. Evidence cannot be impeached by conclusions drawn merely from a general practice. Jumnunjoy Banerjee *versus* Sona Munnee Dasse and others, 26th June 1847, .. .... VII. 349

9. Witnesses to a deed being forthcoming, it was held irregular to have recourse to evidence given by them in a suit affecting other parties. Ram Mookerjee *versus* Ramdoolal Chuckerbitty and others, 6th July 1847, VII. 352

10. Revenue sale: title as purchaser at, declared in a previous suit, is conclusive evidence of that right in subsequent actions between the same parties. Guneish Dutt and others *versus* Ramdyal Singh and others, 18th September 1847, .. .... VII. 393

11. To decide upon evidence given in a case in the magistrate's court, when the *virâ voce* testimony of the same persons is to be had, is irregular. Mitraj Lal and others *versus* Baboo Soondur Sahee, 23rd September 1847, .. .... VII. 398

See 'Practice' No. 126.

'Appeal,' No. 1.

'Acknowledgments,' No. 1.

'Banking Houses,' Nos. 5, 7, 9, 10.

'Debts,' Nos. 12, 13.

'Deeds,' Nos. 2, 5, 6, 7.

'Acquisitions,' No. 16, Part II. Hindu Law.

'Evidence,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

## EXACTIONS.

See 'Fines,' No. 4.

## EXCHANGE.

See 'Bills of Exchange.'

## EXCLUSION.

See 'Bequests,' No. 1.

'Exclusion,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

## EXECUTION OF DECREES.

1. Claim to the amount of a decree, in favor of the ancestor of the plaintiffs, passed 24 years before, disallowed on presumption arising from lapse of time and other circumstances that it had been satisfied. No institution fee levied, and 1-4th only of the regular costs made payable as in summary suits. Mirza Husun Ali *versus* Mirza Shureef and others, 5th March 1811, .... I. 317

2. In a suit brought by A against B, C and D, to recover a share of property acquired by trade while they were in partnership with his father, a judgment was given in favor of A. Execution having been sued out by the plaintiff, D claims exemption from responsibility under the decree, on the plea that neither he nor his father had ever been in partnership with the father of A. This plea held to be inadmissible, no mention having been made at any former stage of the proceedings of the circumstances which it recited. *Ram Mohun Sircar versus Jug Mohun Sircar*, 19th August 1816, .. .. II. 194

3. Execution of a decree 13 years after the date thereof disallowed. *Juggunath Pershad Sircar versus Radha Nath Sircar and others*, 16th November 1818, .. .. II. 280

4. Four years after the date of a decree for money, the decree-holder sued out execution against a grandson of the party against whom the decree was given: as the case involved a point of Hindu law, which could not properly be determined in a summary suit, the decree-holder was referred to a regular suit to prove the liability of the person from whom he claimed the amount adjudged. *Govind Chund versus Nundanund Singh*, 20th August 1819, .. .. II. 308

5. In an action for recovery of a debt due on a mortgaged property, a third party appears and claims a large sum under the decision of the Sudder Dewanny Adawlut. The provincial court awarded to plaintiffs a certain part of their claim: after that was paid, it was ordered that the holder of the decree of the Sudder Dewanny Adawlut should receive what was due to him thereon, and that the plaintiffs should then receive the balance of their claim. The third party appealing to the Sudder Dewanny Adawlut, it was ordered that he should receive the whole of the sum due under the decree, before the plaintiffs were paid any part of their debt. *Baboo Ram Doss versus Raja Ram Buhadur and others*, 27th January 1825, .. .. IV. 15

6. When part only of a claim is awarded by a judgment, in execution thereof possession of the residue cannot be given; although it should immediately devolve on the claimant by a clear title. *Rai Sham Bullubh versus Pran Kishen Ghose*, 29th March 1830, .. .. V. 21

7. Judgment of the provincial court in favor of A, who claimed an estate of B, was executed on the security of C, who stipulated to hold the estate and profits to abide the result of B's appeal. The Sudder Dewanny Adawlut reversed the judgment; and B, in execution of its decree, obtained an order to levy an adjusted award of mesne profits from A and C. After this A sued C on his acknowledgment of profits for 2 years, exceeding the sum awarded to B for 4 years. B intervened and claimed the sum sued for. Held, that B is entitled to a judgment against C., who may set off judgments by him held for advances made to A; and B, by merely intervening, cannot obtain an award for excess of profits. *Kajeh Bagdesur versus Gholam Hosein Ali and another*, 31st July 1832, V. 218

8. A judgment between mortgager and mortgagee for foreclosure of a mortgage, is no bar to the execution of a decree held by a third party with a prior lien upon the same property if established. *Kalee Kishen Nag Chowdree versus Bissumber Sein and others*, 12th February 1848, VII. 439

See 'Attachment,' No. 4.

'Auction Sale,' No. 39.

## EXECUTORS.

1. An executor, in selling houses or other property belonging to an estate, ought to exact immediate payment, instead of selling upon credit to irresponsible buyers; and, in the event of the heirs of the testator suing to recover the assets, the executor, or his representative, will be responsible

for the amount. *Ruzia Begum versus Aka Mahomed Ibrahim*, 8th August 1806... .. I. 152

See 'Bequests,' Nos. 7, 8. Part III. Mahomedan Law.  
'Executors,' *passim*, Part III. Mahomedan Law.

## EXPARTE DECISIONS.

1. Held by the Sudder Dewanny Adawlut that the decision of the lower court cannot be considered imperfect merely because the case was tried *ex parte*; the defendant having received the usual notice, but neglected to defend the action. *Sukheena Khanum versus Alexander Imlach*, 5th July 1836... .. VI. 76
2. The defendant having failed to appear in the court of original jurisdiction, and having shewn no good reason for the default, the court would not entertain his appeal or enter into his objections to the claim. *Mofiz-zooddeen versus Ram Ruttun Rai*, 6th June 1840... .. VI. 288

## FAKEER.

See 'Faker,' Part III. Mahomedan Law.

## FAMILIES UNDIVIDED [HINDU.]

See 'Families Undivided,' Part II. Hindu Law.

## FAMILIES UNDIVIDED [MAHOMEDAN.]

See 'Families Undivided,' Part III. Mahomedan Law.

## FAMILY USAGE.

See 'Usage.'

## FARMERS.

1. In the absence of any specific condition to the contrary, it was held that the expense of maintaining subordinate dawk establishments under Section 10, Regulation XX. 1817, should be defrayed by the farmer of an estate. *J. C. Abbott, versus Collector of Rajshahye* and another, 29th May 1847, .. .. VII. 310

## FARMING ENGAGEMENTS.

1. The farmer of an estate under the Court of Wards was debited with the expenses of collection by a *Surberakar*, employed during part of a year before the farmer entered upon possession. *Collector of Dnagapore versus Muha Mye Debbea*, 31st July 1847, .. .. VII. 376

## FATHER.

See 'Father,' Part II. Hindu Law.  
,, Part III. Mahomedan Law.

## FATHER'S BROTHER.

See 'Father's Brother,' Part II. Hindu Law.  
,, Part III. Mahomedan Law.

## FATHER'S BROTHER'S SON.

See 'Father's Brother's Son,' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

## FEES.

See 'Privileges,' *passim*, Part II. Hindu Law.

## FICTITIOUS SUITS.

1. The Circular Order of 29th July 1809, prohibiting the institution of suits under fictitious names, does not refer to the case of a plaintiff suing in his own name for the recovery of money lent by him on a bond executed in the name of another. *Beijuath Ghuttuck versus Fakeer Chund*, 19th September 1836,..... VI. 108

## FINES.

1. Respondent fined 100 rupees by the Sudder Dewanny Adawlut for mis-stating facts to the court, respecting a decree of the provincial court affecting the property in dispute, with a view to obtain an order for the enforcement of a decree of the Sudder Dewanny Adawlut, which the provincial court had delayed till further instructions. *Duljeet Singh versus Sheo Munook Singh*, 7th September 1802, ..... I. 59

2. Respondents fined 200 rupees each and their *mokhtar* 50 rupees, for endeavouring to impose on the Sudder Dewanny Adawlut a false copy of a record. *Radha Munee Dibia versus Sham Chunder* and another, 27th September 1805, ..... I. 85

3. The zillah judge decreeing summarily to a farmer possession of lands, which the under-tenants, though in balance, refused to give up, fined them 100 rupees to Government for having retained possession by force; the Court held that the fine was not authorized by the Regulations and remitted it. *Jugessur Mustofa versus Sham Mohun Rai* and another, 3d August 1807, ..... I. 206

4. In a suit by certain landholders against a *tukseeldar*, for undue exactions, a fine of three times the amount exacted was decreed to Government against the *tukseeldar*, in addition to the refund to the landholders. *Baboo Deokynundun Singh versus Jobraj Rai* and others, 19th February 1808, .. I. 229

5. In a suit for money and property embezzled, the provincial court adjudged the payment of one-third of the amount claimed to be made by one of the defendants as a fine for his connivance; but, on an appeal preferred by him, the Sudder Dewanny Adawlut reversed this order, as unwarranted by the Regulations and inconsistent with the practice of the civil courts. *Gocul Pershad versus Sunsara Mull*, 13th November 1827, .. IV. 268.

6. The rules contained in Section 6, Regulation IV. 1793, for the award of fines, cannot be considered applicable to the case of a person whose attendance may be required as a witness upon whom a summons has not been served. *Gudadhur Pershad versus Raja Tejchund*, 7th December 1827,..... IV. 287

7. A zillah judge having fined a defendant 100 rupees for the temerity of his defence, the court considered the order unjust and contrary to practice. *Rai Radha Govind Singh versus Gora Chund Gosayn*, 15th April 1833,..... V. 292

8. Fines under Clause 2, Section 17, Regulation XIX. 1814, cannot be inflicted on dependent *talookdars*. *Hurnath Surmah Chowdry and others versus Collector and Deputy Collector of zillah Mymensingh*, 19th June 1847,..... VII. 347

See "Appeals," No. 28.

## FISHERY, RIGHT OF.

See 'Julkur.'

## FORECLOSURE.

See 'Mortgage.'

## FOREST, RIGHT OF.

See 'Bunkur.'

## FORFEITURE.

Of Interest. See 'Interest,' Nos. 2, 17, 20, 31.

Of Principal. See 'Interest,' Nos. 1, 19, 26, 31, 33, 34.

## FRAUD.

1. A will not published by a son for some years after the death of his father, nor exhibited in a suit instituted by his brother for a share of the paternal estate in the zillah or provincial court, but first produced in appeal from the judgments of those courts to the Sudder Dewanny Adawlut, when it was found to contradict the appellant's original pleas, rejected by the latter Court, as the appellant could not be suffered to derive advantage from a will, which [if authentic] had been dishonestly suppressed by him. *Sufder Hosein versus Enayet Hosein* and others, 25th November 1805, . . . I. 111

2. Lands purchased at a public sale by A, with the money of B, under instructions to make the purchase in the name of B, but fraudulently made by A in his own name and wrongfully withheld from B, adjudged to B on proof of the fraud. *Pudum Nath Rai versus Rancee Jugdesir*, 2d May 1806, . . . I. 132

3. A deed called a *wusseutnameh*, or deed of inheritance, [in which a widow in possession of a zemindaree acknowledged two distant relations of her husband to be her heirs, and transferred the zemindaree to them on condition that they should support her for life,] set aside as fraudulent and void, on presumption that it was not the intention of the widow to transfer the estate before her death; and that the clause to that effect was surreptitious, or by some undue means imposed upon her without her voluntary consent. *Shunker Dutt Ojha* and another *versus* Musst. Sonaen Ojhaen, July 1806, . . . . . I. 147

4. An *ikra nameh*, or written acknowledgment, relative to a stated purchase of land, though supported by the testimony of witnesses, set aside as apparently fraudulent, under circumstances of strong presumption at variance with the purport of it. *Lukhee Kaunt versus Bijnath Rai*, 25th August 1806, . . . . . I. 157

5. A bond having been taken, evidently by undue means, through the official influence of the *dewan* to a collector, but nominally granted in favor of one of his dependents, [a writer in the collector's office, who could not from his means and situation in life be supposed, by any probability, to have been the principal in the transaction,] cancelled as illegal and fraudulent. *Manik Chund Banoja versus Raja Gooroo Nurain*, 19th September 1806, . . . . . I. 165

6. Since the enactment of Regulation VII. 1799, the courts can give no remedy against a fraudulent agent employed to purchase lands in his own name at a collector's sale, in an action for possession; but may cause him to refund the amount received in an action for debt. Yet, on proof of a conveyance subsequently executed by such agent to the real purchaser, the Court will cause performance, without enquiring too minutely into the grounds of the transaction. *Ram Manic Modce versus Jye Nurain*, 21st September 1809, . . . . . I. 292 Note.



7. A purchases his own lands which were set up to auction for arrears of revenue, by employing an agent to bid for them. This agent, by authority of A, alienated them to B, by a deed of *bye-bil-wufa*, or mortgage and conditional sale, which sale became absolute. A afterwards brings a suit to recover the lands as his own under auction purchase, alleging the subsequent transfer to be illegal, inasmuch as B had exacted usurious interest on the mortgage money. But the original purchase of A, on which he rested his claim and title, having been in direct violation of the Regulations, and A having received more for the lands than he gave for them, even admitting a deduction for the alleged usurious interest, the Court did not judge it necessary to investigate the truth of this allegation, and rejected the claim of A. *Raja Bishen Nath Rai versus Kureemoolla Chowdry* and another, 21st July 1813, . . . . . II. 71

8. Had B's possession been fraudulent, the estate would have been liable to forfeiture to Government. *Raja Bishen Nath Rai versus Kureemoolla Chowdry* and another, 21st July 1813, . . . . . II. 73

9. The fourth clause of Section 29, Regulation VII. 1799, prohibits defaulting landholders, whose lands may be sold at public auction for the discharge of arrears of public revenue, from becoming purchasers, directly or indirectly, of their own lands so disposed of, under penalty of forfeiture to Government. *Raja Bishen Nath Rai versus Kureemoolla Chowdry* and another, 21st July 1813, . . . . . II. 73

10. A being indebted to B, grants him a mortgage of his estate [antecedating the mortgage deed eight years.] together with a bond, conditioned for the payment of the debt by yearly instalments, and a warrant of attorney to confess judgment. The estate of A having been attached by Government for arrears of revenue, and several instalments on the bond being unpaid, B caused judgment to be entered up in the Supreme Court on his bond and warrant of confession, and sued out execution, under which the lands were sold by the sheriff at public auction and purchased by C, who afterwards sold them by private contract to D. Seven years after, A having died, his son and heir sued B, C and D, to recover the lands, on the plea that the mortgage to B by A was fictitious, and granted with a view of screening his property from other creditors; and that B had executed an engagement to that effect, promising that should he cause the estate to be sold under the deeds in his possession, he would himself become the purchaser, and cause it to be transferred to the son of A. Determined that the engagement [if proved] being intended to defeat the rights of third parties, cannot avail A or his representative against B, much less against C and D, who were purchasers for a valuable consideration, without notice. *Ram Luder Deo Rai versus Roop Nurain Ghose* and others, 5th August 1814, . . . . . II. 118

11. The respondents having collusively created a fictitious *talook* in favor of the appellants, to evade a decree passed against them in another suit, were obliged, in repelling a suit for the *talook*, to plead their previous collusion. Judgment against them. *Brij Mohun Sein* and another *versus* *Ram Nuram Rai* and others, 19th May 1829, . . . . . IV. 341

12. A suit to set aside a sale made by the plaintiff, on the ground that it was merely a nominal and fictitious sale, with a view to evade process of Court, dismissed on the principle that no party can take advantage of his own wrong. *Roushun Khatoun Chowdram versus Collector of Mymensing* and another, 24th March 1846, . . . . . VII. 257

See 'Agents,' Nos. 7, 8.

'Limitation,' Nos. 7, 41, 48.

'Practice,' No. 50.

'Rent-free Tenures,' Nos. 19, 20, 24.

'Sale,' Nos. 4, 5.

## FREIGHT.

See 'Action,' No. 6.

## FRENCH LAW.

See 'Absentees,' No. 1.  
 'Bequests,' Nos. 3, 4.  
 'Widows,' No. 2.

## FURZEE,

See 'Actions,' No. 12.  
 'Agents,' Nos. 7, 8, 12, 15, 16.  
 'Confiscation,' Nos. 2, 5.  
 'Fraud,' No. 11.  
 'Grants,' Nos. 1, 2.  
 'Practice,' No. 49.  
 'Bequest,' No. 1, Part III. Mahomedan Law.

## GHATWALEE TENURES.

1. Held that a *ghatwalee mehal* in zillah Beerbhoom is not divisible on the death of the *ghatwal* among his heirs, but should devolve entire on the eldest son, or the next *ghatwal*. *Hurlal Singh versus Jorawun Singh*, 19th June 1837, . . . . . VI. 169

## GIFTS.

See 'Gifts,' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

## GOLAHs.

1. Claim by the appellants to the privilege of levying duties on *golahs* erected by *beoparees* on the lands of a third person, disallowed. *Musst. Doolah Dibia and another versus Rajah Oodwunt Singh and another*, 29th June 1819, . . . . . II. 303

## GOMASITEH.

See 'Banking Houses,' Nos. 1, 4, 6, 9, 10.

## GOOROO.

See 'Gooroo,' Part II. Hindu Law.

## GOVERNMENT.

See 'Practice,' 127.

## GOVERNOR GENERAL IN COUNCIL

See 'Auction Sale,' No. 1.  
 'Assessment,' Nos. 3, 11.  
 'Confiscation,' Nos. 2, 5.  
 'Leases,' No. 11.  
 'Rent-free Tenures,' No. 12.

# GOVERNMENT LOAN.

See 'Practice,' No. 74.  
 'Rent-free Tenures,' No. 32.

# GRAND DAUGHTERS.

See 'Grand Daughters,' Part II. Hindu Law.

# GRAND MOTHERS.

See 'Grand Mothers,' Part III. Mahomedan Law.

# GRANDSON.

See 'Grandsons,' Part II. Hindu Law.  
 " Part III. Mahomedan Law.

# GREAT GRANDSONS.

See 'Great Grandsons,' Part II. Hindu Law.

# GRANTS.

See 'Altumgha.'  
 'Assessment.'  
 'Leases.'  
 'Rent-free Tenures,' Nos. 4, 21, 24.  
 'Grants,' *passim*, Part III. Mahomedan Law.

# GUARDIAN.

See 'Bonds,' No. 4.  
 'Debts,' No. 9.  
 'Review,' No. 3.  
 'Marriage,' No. 5, Part III. Mahomedan Law.  
 'Sale,' No. 1, Part III. Mahomedan Law.

# GUDDEE.

See 'Guddee,' Part II. Hindu Law.

# GUNGA-JUMNA.

See 'Accounts,' No. 2.

# GUNGE.

See 'Assessment,' No. 18.

# HEIRS.

See 'Heirs,' Part II. Hindu Law.  
 " Part III. Mahomedan Law.

# HIBEH-BIL-EWUZ.

See 'Hibeh-bil-ewuz,' Part III. Mahomedan Law.

# HIBEI-MOSHAA OR UNDEFINED GIFTS.

See 'Hibeh-Moshaa or Undefined Gifts,' Part III. Mahomedan Law.

## HINDU LAW.

See 'Hindu Law,' Part II.

## HOMICIDE.

See 'Composition,' Part III. Mahomedan Law.

## HOOONDEE.

See 'Bill of Exchange,' *passim*.

## HUSBAND.

See 'Husband,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

## HUSBAND'S BROTHER.

See 'Husband's Brother,' Part II. Hindu Law.

## HUZOOREE MEHAL.

See 'Auction Sales,' Nos. 26, 27, 29.

## IDIOT.

See 'Idiot,' Part III. Mahomedan Law.

## IGNORANCE.

See 'Deeds,' No. 8.

## IKRARNAMEH.

See 'Acknowledgments,' No. 3.

'Deeds,' Nos. 7, 12.

'Fraud,' No. 4.

'Mortgage,' No. 41.

'Deeds,' No. 2. }

'Gifts,' No. 6. } Part II. Hindu Law.

## ILLEGITIMATE SONS.

See 'Bequests,' Nos. 1, 2.

'Illegitimate Sons,' Part II. Hindu Law.

## IMPEDIMENTS TO SUCCESSION.

See 'Impediments to Succession,' Part II. Hindu Law.

## INAAM.

See 'Inaam,' Part III. Mahomedan Law.

## INCIDENTAL JUDGMENT.

See 'Decrees,' No. 3.

## INDEFINITENESS,

See 'Indefiniteness,' Part III. Mahomedan Law.

## INDEPENDANT TALOOK.

See 'Auction Sale,' No. 7.

## INDIGO.

See 'Actions,' No. 7.  
'Leases,' Nos. 20, 24.

## INHERITANCE.

See 'Inheritance,' Part II. Hindu Law.  
" Part III. Mahomedan Law.

## INITIATORY CEREMONIES.

See 'Initiatory Ceremonies,' Part II. Hindu Law.

## INSANITY.

See 'Conveyance,' No. 3.  
'Decds,' No. 11.  
'Parentage,' No. 2, Part III. Mahomedan Law.  
'Review,' No. 1.

## INSOLVENT ACT.

See 'Jurisdiction,' No. 14.

## INSOLVENT DEBTS.

See 'Stamps,' No. 1.

## INTEREST.

1. The original amount of a loan is not forfeited in consequence of the stipulation of illegal interest; nor is a bond taken on the adjustment of the balances of a debt, bearing such illegal interest, held to be an attempt to elude the Regulations and to obtain interest upon interest, which would involve a forfeiture of principal. *Rai Balgovind versus Sheikh Gholam Ali*, 24th June 1805, . . . . . I. 93
2. Penalty for illegal interest declared in Section 8, Regulation XV. 1793, [i. e. forfeiture of interest] applicable to interest exceeding rates fixed by antecedent Regulations from 28th March 1780, and applied to interest on two bonds at 25 per cent. per annum (the first dated in 1781, the second in 1784) although payment had been made under the former bond in discharge of the principal and interest, and the second bond was given for the balance. *Ibid.*, . . . . . I. 93

3. Claim by appellant to balance of principal and interest alleged to be due on a mortgage, dismissed; it appearing that the special conditions of the mortgage only entitled the mortgagee to receive the usufruct as interest, though lower than the legal rate, leaving the time of redeeming the mortgage, by the payment of the principal lent, at the option of the mortgagers. *Behari Lal versus Musst. Phckoo* and another, 18th December 1805, . . . . . I. 191
4. Had the usufruct exceeded the legal rate of interest, the excess would have gone to the liquidation of the principal under the operation of Section 10, Regulation XV. 1793. *Ibid.* . . . . . I. 121
5. Claim by respondent to interest, during two appeals, on the amount of a zillah decree passed in his favor, and confirmed in each appeal: claim adjudged. *Jogul Kishore and others versus Radha Kunt Ghose*, 18th August 1806, . . . . . I. 154
6. Claim by the heir of a mortgager to recover certain mortgaged lands dismissed; the mortgage, which provided for the usufruct being received as interest, until the lands should be redeemed by the payment of the principal lent, not appearing to have been cleared. *Mehr-o-nissa Khanum versus Musst. Budamoon and others*, 25th May 1807, . . . . . I. 185
7. Had the usufruct exceeded the legal interest, it would have been receivable as interest down to March 1780, after which the legal interest only would have been allowed to the mortgagee, the surplus being applicable to the discharge of the principal. *Ibid.* . . . . . I. 185
8. On the institution of a suit to recover principal and interest on a bond, the interest should be calculated up to the time of plant; but the *Sudder Dewanny Adawlut* passed a judgment in favor of the lender for the recovery of the principal of the bond, with interest from the date of the bond to that on which the final decree should be carried into execution. The Court determined that the restriction contained in Section 6, Regulation XV. 1793, against a judgment for interest exceeding the principal, when the legal interest 'shall have accumulated so as to exceed the principal,' is not applicable to a case in which the accumulation is subsequent to the institution of the suit, and not ascribable in any degree to procrastination on part of the creditor. *Musst. Mukun versus Mohunt Ram Pershad*, 15th July 1808, . . . . . I. 212
9. In a suit for the amount of two bonds, with an equal sum as interest, [under Section 6, Regulation XV. 1793, the interest due having exceeded the principal,] one payment of interest is admitted, but it appears that the interest due since the payment exceeds the principal. The Court hold that the rule contained in the Regulation quoted, relates only to interest unpaid and in arrear, and that a sum equal to the principal is recoverable as interest, exclusive of the payment made. *Gholum Ahmed Khan versus Munohur Doss*, 27th November 1809, . . . . . I. 294
10. In case of appeal to the provincial court from the decree of a zillah court, founded on the award of arbitrators, alleged to have been guilty of partiality and corruption, should the charge not be proved and the appeal be dismissed, interest must, according to the provisions of Section 3, Regulation XIII. 1806, be awarded from the date of the zillah decree, even though the provincial court do not go into the merits of the case. *Mr. John Buckley versus Ram Soonder Ghose*, 17th November 1810, . . . . . I. 312
11. In a case of *bye-bil-wufa*, or mortgage and conditional sale, the condition of re-sale being virtually a stipulation for interest beyond the legal rate, the transaction was held to be in violation of Section 8, Regulation XV. 1793, and the interest liable to forfeiture. *Mahomed Jan Chowdry versus Ram Ruttun Doss*, 29th April 1815, . . . . . II. 146

12. But the bill of sale and engagement having been publicly registered, the transaction was not held to be an evasion of the above Regulation, involving a forfeiture of principal. *Ibid.*, . . . . II. 146

13. A, a *Mussulman*, sued B for possession of a village under a deed of mortgage and conditional sale for 2,081 rupees, redeemable in 5 years. It appearing that A lent to B only 1,300 rupees, and, to avoid the imputation of taking interest, consolidated the interest for that sum for five years with the principal, and caused the aggregate to be entered in the bond as principal: adjudged that he was not entitled to possession of the village, at the expiration of the period of redemption. The Court however ordered that he should recover the principal sum actually lent, with interest thereon, as there had been no attempt to obtain usurious interest beyond the legal rate. Syud Khadim Ali *versus* Duljeet Singh and another, 16th March 1818, II. 255

14. A mortgager is entitled to recover possession of an usufructuary mortgage on payment of the principal sum borrowed; the question of interest being left open to future adjustment. Karta Rai and another *versus* Afzul Ali, 8th January 1820, . . . . III. 3

15. The courts are not competent to strike off interest on the ground of delay in suing for a debt, if the claim be otherwise cognizable. Balnath Sahoo and another *versus* Raja Budun Mohun Singh and others, 7th August 1820, . . . . III. 48

16. Held that the institution of a suit for the recovery of a debt before the time specified for payment, is not a sufficient reason for depriving the creditor of interest after the debt has become due, though sufficient for refusal of costs, or for nonsuit. Mohunt Runjeet Gir *versus* Kunhya Lal and others, 12th February 1821, . . . . III. 68

17. A bond having been executed before the 1st January 1804, in Allahabad, bearing interest at the rate of 12 per cent. per annum, and subsequent to that date a second bond [the first remaining uncanceled] for the same debt at a higher rate of interest, held that agreeably to Regulation XXXIV. 1803, the legal interest is not thereby forfeited. Jeetun Doss *versus* Lal Rooder Pertab Singh, 18th June 1821, . . . . III. 96

18. A having sued B in the court of appeal, obtains judgment with an award of interest from the date of the decision. On appeal by B, judgment confirmed on the merits of the case. A afterwards sues B in the city court for interest from the date of institution of the original suit: held that the claim is cognizable to supply a defect in the former decree. Baboo Ram Chund *versus* Govind Doss, 19th November 1821, . . . . III. 127

19. In a case where money was borrowed and a bond executed for the payment thereof, with interest at the legal rate of 12 per cent. per annum, and afterwards another bond executed for the payment of  $\frac{1}{2}$  per cent. per mensem as *mehnutana*, the Court held that no part of the original debt was recoverable, even though no illegal interest had been received. Oudan Singh and another *versus* Kanth Chund Pandeh and another, 23d January 1823, III. 205

20. Held that it is not an evasion of the usury Regulation for a surety to exact more than the legal interest, on advance of Government revenue made by him, as compensation for his risk. Baboo Motee Chund *versus* Mooftee Abdoolla and others, 23d August 1823, . . . . III. 261

21. A claim being preferred for a debt on bond exclusive of interest, the Court adjudged, in decreeing the claim, that it was optional with the creditor to take interest at the rate of 12 per cent. per annum from the date of plaint to the day of judgment, or institute a fresh suit for interest equal to the principal sum from the date of the loan. *Ibid.*, . . . . III. 261

22. Judgment for principal and interest of bond debt, together with interest on the aggregate sum from the date of the suit, confirmed on appeal to the provincial court, with interest on the amount of the judgment; but

interest while the cause was pending in special appeal before the Sudder Dewanny Adawlut, calculated on the amount of the original bond only. Raj Chunder Rai *versus* Ram Hurree Ghosal, 29th November 1823, . . III. 268

23. Held that according to the spirit of Section 6, Regulation XV. 1793, the courts may award interest exceeding the principal of a debt, if the excess accrued *pendente lite*, and without any fault of the creditor. Baboo Jankee Pershad *versus* Raja Oodwunt Nurain Singh, 19th December 1823, . . . . . III. 270

24. In case of a bond bearing interest at 6 per cent., the Court will award payment at 12 per cent. on proof that the debtor violated an engagement made to the creditor to put him in possession of a farm, as collateral security. Raja Rughoo Nundun Singh *versus* Ramdial Singh, 17th May 1824, . . . . . III. 356

25. In a suit to recover a debt, the provincial court awarded principal and interest to the day of payment, provided the interest did not exceed the principal. The Sudder Dewanny Adawlut allowed the principal and an equal sum as interest, together with 12 per cent. interest on the aggregate sum from the date of their decree to the date of payment. Bunevad Singh *versus* Gholam Ali, 3d December 1825, . . . . . IV. 95

26. In a suit to obtain possession of certain premises under a deed of *bye-bil-wufa*, the mortgage having been foreclosed and the sale become absolute: it appears that 1 per cent. per mensem was the sum stipulated to be paid as interest in the deed of mortgage, but that the mortgagee had received a separate bond engaging the payment of one additional per cent. interest, such proceeding was held to be contrary to the provisions of Regulation XVII. 1806, and the claim was accordingly disallowed. Luchmun Pooree *versus* Jowahir Gir, 24th January 1826, . . . . . IV. 106

27. The validity of a transaction of *bye-bil-wufa* is not affected by the parties not having come to a final adjustment of their respective accounts, previously to the execution of the deed by the conditional seller: neither is it affected, [the term at the end of which the conditional sale was to become conclusive being five years] by the fact of excess above the legal interest having been received by the conditional purchaser in any one year, there being no trace of fraud to elude the law regarding interest. Ram Koomar Neace Bachesputtee *versus* Bhugwuttee Debia and others, 31st January 1826, . . . . . IV. 111

28. In a claim for *wasilaut*, the provincial court having awarded interest for the whole period [13 years], during which a separate suit for the lands was pending, and interest on that amount from the date of their own judgment; the Sudder Dewanny Adawlut reversed so much of the decree as regarded that interest, and awarded the principal sum of *wasilaut*, with interest from the date of the institution of the suit for *wasilaut* in the provincial court up to the date of the decree of the Sudder Dewanny Adawlut, and interest on the aggregate sum from that date till payment should be made. Aman Singh and others *versus* Purmesri Sahai, 29th August 1826, . . . IV. 176

29. Interest exceeding principal may be awarded, when the excess has accrued subsequently to recourse to law for the recovery of the debt. Goverdhun Doss *versus* Waris Ali, 5th September 1827, . . . . . IV. 261

30. A received an advance from B as a loan, free of interest for a given time; and gave a concurrent lease of an estate, at a fixed rent, which was less than the *sudder jumma*, and engaged that B should hold on the farm until the sum borrowed was paid. A sued B to set aside the lease and recover, as cancelled, his bond, on the ground that the lease was a device to evade the usury law, that the transaction was virtually a mortgage, and that the debt had been replaced by the profits of the estate. Claim of A dismissed, as the transaction did not appear to the Court to be a device as charged;



and the right of B to hold over was sustained. Syud Uthur Ali and another *versus* Rai Nuwazee Lal, 1st February 1830, . . . . . V. 8

31. The open and avowed stipulation of increase on a loan, at a rate greater than the legal interest, [declared to include interest and mercantile excess, *budhti sicca*] is not a device to evade; which within Section 9, Regulation XV. 1793, operates forfeiture of principal and interest; but under Section 8, occasions loss of interest only. Khedoo Lal Khattri *versus* Ruttun Khattri, 2d February 1830, . . . . . V. 10

32. Claim by a party ejected from land for mesne profits, augmented by interest, is decreed; and Section 6, Regulation XV. 1793, is held not to bar the award of such augmentation, although exceeding the principal of the estimated rent, such award appearing to be required, for the equitable indemnity of the party injured, with reference to circumstances. Raj Kishwur Rai and another *versus* Fyazooddeen and others, 19th July 1830, . . . . . V. 48

33. Where in a case of loan, secured by bond bearing interest, a small deduction has been made as *dharat*, or discount; it was held that was a device within the meaning of Section 9, Regulation XV. 1793, and rendered the dismissal of the claim necessary. Srinath Mullic *versus* Obhai Churn Nundee, 20th December 1830, . . . . . V. 79

34. In a case of *bye-bil-wufa*, the lender having exacted illegal interest by deduction from the principal, the Sudder Dewanny Adawlut, with reference to Section 9, Regulation XVII. of 1806, dismissed his claim for the land conditionally sold. Bisumber Adli *versus* Kulcemooddeen and others, 17th January 1831, . . . . . V. 81

35. Where A did not include interest in his claim against B, it was held that the Court could not award it. Khajeh Bagdesur *versus* Gholam Husun Ali and another, 31st July 1832, . . . . . V. 218

36. In an account of several years between the borrower and lender under a *bye-bil-wufa*, the Court did not allow the yearly rent to be charged first to the yearly interest, but limited the lender's credit for interest to a sum equal to the principal, and the double principal being less than the rent receipts, the borrower recovered possession of his land. Syud Inayut Ali *versus* Sheikh Deedar Buksh and others, 10th January 1833, . . . . . V. 259

37. The Sudder Dewanny Adawlut adjudge *wasilaut* with interest from the date of a decree, against the heir of the party who failed in that decree, by whose bad faith the gaining party had been kept out of possession. Kripa Sindlu Patjoshi and others *versus* Kanhaya Acharya and others, 31st December 1833, . . . . . V. 335

38. The Sudder Dewanny Adawlut considered the gratuitous conveyance of lands, without payment of any consideration, to be an usurious device under Section 9, Regulation XV. 1793. Parasnath Chowdry *versus* Lala Behari Lal, 28th February 1834, . . . . . V. 346

39. The Court refused interest on mesne profits in consequence of delay in bringing the action. Gooroo Pershad Fotchdar and others *versus* Komula Kant Bose and others, 6th February 1836, . . . . . VI. 52

40. Interest on rent disallowed, in consequence of neglect to sue or make intermediate demand. Motec Baboo *versus* Moses Khachic Arakel, 6th May 1836, . . . . . VI. 67

41. In an action for debt, simple interest only is to be allowed to the date of the decree of the court of original jurisdiction. The Sudder Dewanny Adawlut modified the decree of a lower court, which consolidated the principal and interest to the date of the petition of plaint, and awarded interest on the aggregate sum forward from such date. Byram Singh *versus* Sheq Sahye Singh and others, 28th December 1841, . . . . . VII. 66

42. An objection to the payment of a deposit to the party entitled to receive it, found on investigation to be insufficient, renders the objector liable

for interest on the deposit during the period of detention. *Dewan Ramnath Singh versus Thakur Das*, 3rd April 1846, . . . . . VII. 260

43. The advance of a loan in Government Securities at par, which at the time were at a discount, held, under the circumstance, to be no evasion of the interest law of Regulation XV. 1793. *Kunhya Lall Thakoor versus Ras Muncie Dossa*, 15th July 1816, . . . . . VII. 264

44. Act XXXII. of 1839 does not affect claims to interest on balances of rent. *Musst Kashipreea and others versus Bulram Baboo and others*, 23rd March 1848, . . . . . VII. 473

45. In a suit to recover from defendants the principal and interest of sums paid by plaintiff to save their joint estate from sale, interest refused by the lower court was allowed in appeal. *William Macpherson versus Khajeli Gabriel Avietick Ter Stephanoos and others*, 21st June 1848, VII.

46. Act XXXII. of 1839 is inapplicable to claims for recovery of revenue paid to Government. *Ibid*, . . . . . VII.

#### INVALID JAGEERES.

1. Under Section 2, Regulation XLIII. of 1795, Government are entitled, on the death of the grantee, to revenue, and the zemindar to *malikana* from lands in Benares, assigned in grants to invalid native officers previous to the formation of the decennial settlement. *Government versus Dhola Singh and another*, 5th March 1828, . . . . . IV. 304

#### ISSUE.

1. The parties in a suit for real property having joined issue upon the question of right under the law and facts of the case, and the court of first instance having decided thereon, the appellate court reversed the judgment upon a point irrelevant to the issue. The *Sudder Dewanny Adawlut* admitted a special appeal; and, annulling the judgment of the appellate court, remanded the case for re-trial on its merits. *Ramkesub Pal and others versus Asaram Pal and others*, 13th June 1847, . . . . . VII. 338

#### ISTUMRAREE TENURES.

See 'Assessment,' Nos. 2, 3.

'Lease,' No. 3.

'Talooks,' Nos. 8, 10.

#### INTERFERENCE WITH SUCCESSION.

See 'Civil Courts,' Nos. 8, 9.

#### IRON MANUFACTURES.

See '*Loha Mehal*,' No. 1.

#### JAGEER.

1. Tenure by *jageer* is neither alienable nor hereditary; and is considered as a life grant merely, as far as regards exemption from public assessment. *Collector of Bareilly versus W. C. and J. Martindell*, 31st May 1816, . . . . . II. 188

2. On a claim by the grandson of the original grantee to certain rent-free lands and a money allowance conferred as *jageer* on his ancestor by the former raja of Benares, and confirmed by Messrs. Hastings and Fowke, held that the land tenure should endure under such confirmation, but that the money allowance should be discontinued, no mention of its being here-

ditary having been made in the original grant. Collector of Benares *versus* Muhanuran Singh, 14th July 1824, .. .. . III. 390

## JAIN SHASTERS.

See '*Jain Shasters*,' Part II. Hindu Law.

## JANUSHEEN.

See '*Janusheen*,' Part III. Mahomedan Law

## JEEBKA.

1. *Jeebka* is a portion of land, granted as an allowance for the maintenance of a family. Ram Kunth Dutt and another *versus* Gholam Nubee Chowdree, 10th May 1813, .. .. . II. 57 Note.

## JETHUNSHA.

See '*Jethunsha*,' Part II. Hindu Law.

## JOBRAJ.

See '*Jobraj*,' Part II. Hindu Law.

## JOINT FUNDS OR PROPERTY.

1. In a claim to obtain possession of landed property conditionally sold to three brothers in joint partnership, which was preferred by one, the Court of Sudder Dewanny Adawlut decided that the plaintiff was entitled to a decree to the whole extent of the property purchased in coparcenery. Soonder Nurain Bhoonya *versus* Blurut Churn Sutputtee, 30th December 1844, .. .. . VII. 187

See '*Joint Funds or Property*,' Part II. Hindu Law.

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Part III. Mahomedan Law.

## JOINT FAMILIES.

See '*Joint Families*,' Part II. Hindu Law.

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Part III. Mahomedan Law.

## JUDGMENT CREDITOR.

See '*Practice*,' Nos. 45, 47.

## JUJMAN.

See '*Jujman*,' Part II. Hindu Law.

## JULKUR.

1. A river having changed its bed, the right of fishery in the old channel is preserved to the proprietor in the new stream. Isher Chund Rai and others *versus* Ram Chunder Mokerjee, 11th December 1807, .... I. 221

2. A, holding the right of fishery in the branch of a river, having taken possession of a *jheel* formed by the overflows on the adjacent lands of B, declared, on the suit of B, to have no right or interest in the *jheel*, it not being connected with the channel of the river, which had not altered. Gopeenauth Rai and another *versus* Ram Chunder Turklunker, 5th February 1808, .. .. . I. 228

3. A purchases, at a public sale by the collector, the *julkur* of certain *jheels*. One of these becomes dry; and it is determined that A's purchase of the *julkur* only, does not convey any property in the lands, which belong

to the proprietor of the *jheel*. *Lukhee Dossee versus Khatma Beebee and others*, 13th March 1813, .. .. II. 51

## JUNGLE BOOREE TENURES.

See 'Assessment,' No. 12.

'Lease,' No. 6.

## JUNGLE MEHIALS.

See 'Ancestral Property,' No. 15, Part II. Hindu Law.

## JURISDICTION.

1. Plaintiff advanced money to defendant in Backergunge on deeds of *kut-kubala*, on lands in another zillah; and after the term of the deeds has expired, sues for the money in the Backergunge court, and obtains a judgment. The provincial courts reverse it, thinking the suit only cognizable in the zillah where the land is situated. The *Sudder Dewanny Adawlut* rule that the suit, being specifically for money, is clearly cognizable in Backergunge. *Loknath Chukerbutty versus Kalkunker Sein*, 4th May 1810, .. .. I. 301

2. Section 8, Regulation III. 1793, empowers the zillah and city courts to take cognizance of all suits and complaints of a civil nature, against persons amenable to their jurisdiction, 'provided the landed, or other real property, to which the suit or complaint shall relate, shall be situated, or, in all other cases, the cause of action shall have arisen, or the defendant at the time when the suit may be commenced, shall reside, as a fixed inhabitant, within the limits of the zillah or city over which their jurisdiction may extend.' *Ibid*, .. .. I. Note. 302

3. In a suit instituted in the city court of Patna, against a resident of that place, for the amount of a debt incurred in a foreign territory, the defendant pleads against the jurisdiction. But the *Sudder Dewanny Adawlut* overruled his plea, and determined that he was amenable in a personal action for debt to the jurisdiction of the city court of Patna. *Dwarka Doss and another versus Raja Jhoolal*, 20th August 1810, .. .. I. 306

4. Part of a debt having been realized by process of the Supreme Court, and the action there having been discontinued, it is still competent to the complainant to sue for the remainder in a provincial court, though the claim to be reimbursed for costs incurred in the former court will be rejected. *Munohar Lal versus Ram Nurain Ghose*, 16th January 1821, .. .. III. 66

5. The *Sudder Dewanny Adawlut* will uphold a decree of the Supreme Court, in a favor of a mortgage founded on a bond to confess judgment, although the foreclosure of the mortgage may be contrary to Regulation XVII. 1806; the mortgager having voluntarily subjected himself to the jurisdiction. *Zameeroodeen and another versus Ram Mohun Mullic*, 19th September 1821, .. .. III. 111

6. In a dispute respecting the boundary of two estates situated in different zillahs, held that the summary award of one court is insufficient to render the contested lands exclusively subject to its jurisdiction, and invalidate, under Section 8, Regulation III. 1793, a regular suit, which the party cast may institute in the court of the zillah within which he maintains them to be situated. *Ladlee Mohun Thakoor versus Ishwur Chunder Pal*, 15th December 1823, .. .. III. 282

7. Submission by covenant to the jurisdiction of the Supreme Court does not bar the jurisdiction of the courts in the interior. *Suraj Nuraïn versus Assignees of Palmer and Co.*, 5th March 1833, .. V. 271

8. In an action for possession of property purchased at a sale made by the sheriff of Calcutta, in execution of a judgment of the Supreme Court, it is not competent to the Company's courts to enter into circumstances which go to affect the justice of the judgment given by the Supreme Court, or of the execution under it. *Nobin Kishen Holdar versus Bissumber Seil*, 23d September 1837, .. VI. 187

9. In a case of goods consigned for sale by a party in one district, to a mercantile house in another district, the goods sold in the latter, and the proceeds carried to the credit of the consigner to meet alleged demands due by him to the consignee, it was held that the action should have been brought in the court of the district of the consignee, and not in that of the consigner. *Seetla Deen Bajpie and another versus Deen Dyal Tewaree and another*, 30th July 1838, .. VI. 237

10. The plaintiff, a guardian of certain minors, having demised subsequently to the decision of the zillah court, given in his favor, in an action brought by him involving a claim on the part of the minors to a legacy under a will, and no successor having been appointed by the *mofussil* court; and proceedings in regard to the will having been instituted in the Supreme Court, the *Sudder Dewanny Adawlut* set aside the decree of the zillah court, leaving the claim preferred to the decision of the Supreme Court. *E. K. Hume versus R. Vaughan*, 6th June 1840, .. VI. 289

11. In a dispute as to whether certain lands formed part of a private estate, or of a *mehal* ordered for resumption by a decree of the special commissioner appointed under Regulation III. 1828, a mere plea by the revenue authorities that the land belonged to the resumed *mehal*, does not bar in *limine* the jurisdiction of the civil court. *Sudder Board of Revenue versus Sheb Pershad Mundul*, 14th August 1840, .. VI. 297

12. The plaintiff sued in zillah Patna to set aside certain summary orders passed in execution of a decree in the zillah court of Behar. Held, that the action had been irregularly brought first in point of local jurisdiction: secondly, in point of general jurisdiction under Construction No. 1129. *Burkut-o-nissa Begum versus Syud Ahmud Hosein*, 12th November 1840, .. VI. 303

13. A zillah court has jurisdiction in a suit between parties trading in Calcutta, but residing within the zillah, the cause of action having arisen in Calcutta. *Bishno Churn Singh versus Degumberce Dossa and others*, 14th January 1841, .. VII. 1

14. One of the defendants having taken the benefit of the Insolvent Act in Calcutta, is no bar to the zillah court's cognizance of the action against the rest of the defendants, .. *Ibid.*

15. The pledge of property out of Calcutta, as security for a debt contracted in Calcutta by a party resident in Calcutta, does not render him subject to the jurisdiction of the zillah court as to the debt. *Ashootos Dey and another versus Miss Julia Gregory*, after her death the Registrar of the Supreme Court and another, 5th January 1842, .. VII. 69

16. Held that a suit in the zillah court, while an action by the same plaintiff against the same party, for the same property, was pending in the Supreme Court, was barred, under the spirit of Section 12, Regulation III. 1793. *Rai Pran Kishen Mitter versus Motee Soondree*, 31st March 1842, .. VII. 79

17. A claim for the title deeds of property, not within the jurisdiction of the *Sudder Dewanny Adawlut*, dismissed as not cognizable by the Court.

Muha Raneë Bussunt Koomaree *versus* Muha Raneë Kummul Koomaree and another, 29th December 1846, .. .. VII. 144

18. Held that the court in which a suit for a portion of property claimed under a disputed title should be instituted, is to be determined with reference to the value of the title and not to the value of the portion sued for. Asseemooddeen *versus* Moonshee Munneerooddeen Mahomed and another, 28th February 1846, .. .. VII. 255

19. An action, the real though not avowed object of which is to reverse a decree of the courts for the trial of resumption suits, cannot be heard by the ordinary courts. Sudder Board of Revenue *versus* Dilawur Ali and another, 4th March 1846, .. .. VII. 256

20. A decree of the resumption courts, in regard to the right of assessment of lands, does not bar the jurisdiction of the ordinary courts of justice in regard to the question of proprietary right. Syud Shah Mohummud Yasin *versus* Syud Enyet Hussein and another, 17th December 1846, VII. 284

21. In a boundary dispute between plaintiff (Rajah of Tipperah) and Government, the Sudder Dewanny Adawlut held that they had no jurisdiction, as the lands in litigation were claimed as within the independent territory of the former. Maharajah Kishen Kishore Manick *versus* Collector of Sylhet and others, 19th September 1848. .. .. VII.

22. Suit for possession of property in zillah Dacca, purchased at a sheriff's sale in execution of a decree of the Supreme Court: judgment of lower court in favor of plaintiff affirmed. Bibi Takoi Sherab and others *versus* Mukheethur Vardoon and another, September 1848, .. .. VII.

23. Magistrates are not amenable to the *mofussil* courts for their official acts. Government *versus* Brijsoonder Dasee and another, 18th May 1848, VII.

#### KABEEN-NAMEH.

See 'Kabeen-nameh,' Part III. Mahomedan Law.

#### KAZEE.

See 'Kazee,' Part III. Mahomedan Law.

#### KHALSA.

See 'Decrees,' No. 2.

#### KHARIJNAMEH.

See 'Acknowledgments,' No. 2.

#### KHILWUT-I-SUHEEH.

See 'Khilwut-i-Suheeh,' Part III. Mahomedan Law.

#### KHUNDAIT.

See 'Assessment,' No. 15.

#### KOOLACHAR.

See 'Koolachar,' Part II. Hindu Law.

#### KRITRIMA.

See 'Kritrima,' Part II. Hindu Law.

#### KURTA-POOTRA.

See 'Kurta-pootra,' Part II. Hindu Law.

#### LAKHIRAJ.

See 'Rent-free Tenures,' *passim*.

## LANDLORD AND TENANT.

1. Held that the civil courts can interfere with a landlord as to the amount of rent which he may demand from a tenant refusing to quit premises, the possession of which the landlord has established his right to recover. Held that the amount of rent to be awarded in the shape of damages on a tenant refusing to quit, ought to depend on the degree of unreasonableness involved in the tenant's recusancy. *Rajah Kishen Kishore Manic versus Mr. Courjon and others*, 22nd May 1844, .. ' .. .. VII. 163

## LAND TENURES.

See 'Assessment.'  
'Leases.'  
'Rent-free Tenures.'  
'Settlement.'  
'Talooks.'

## LAPSE.

See 'Lapse,' Part II. Hindu Law.

## LEASES.

1. Claim by appellants on respondent for arrears of rent, and to set aside a lease of a *talook* in consequence of the terms not being fulfilled. Part of the sum claimed adjudged, as having been illegally received from the lessor by respondent and his ancestor. Part recoverable from others. Respondent not being lessee, claim of appellant to set aside the lease rejected. *Casinath and others versus Aboo Mahomed Khan*, 10th July 1805, .... I. 95

2. Claim of appellant to the *talookdaree* right of certain lands in the zemindaree of the respondents, not proved, and dismissed; but, on proof of right to hold the lands as a *mouroossee ijareh*, or hereditary leasehold, at the customary rent of the *pergunnah*, judgment given accordingly. *Dya Ram versus Bhubinder Nurnin* and another, 9th June 1806, .... I. 139

3. A *mouroossee ijareh* differs from a *talook*, in that it does not convey more than an hereditary right of occupancy. If it be not *istumraree*, or entitling the tenant to hold at a fixed rent, the amount of the annual rent payable to the zemindar is variable; and when not settled by mutual agreement, is determinable only by the indefinite standard of the customary rate of the *pergunnah*, that is the rate paid for similar tenures in the *pergunnah*. *Ibid*, .. .. I. 140 Note.

4. Claim by A on B, a landed proprietor, for the produce of lands of which a lease had been granted to the claimant for 4 years, and renewed in the same year for 10 years further, but possession taken from him in favor of a new lessee. Produce adjudged till the end of the first lease. The renewed lease held to be invalid, being in opposition to Section 2, Regulation XLIV. 1793. [This Section has been rescinded by Section 2, Regulation VIII. 1819.] *Bhunjun Singh versus Moher Singh*, 4th September 1807, .. .. I. 212

5. Claim by the proprietors of a *jageer* to recover certain lands from a person who asserted a right to hold them under a *mocurruree pottah* at a low rent. On proof that the *pottah* was obtained from the agent of the *jageerdars*, without their authority or knowledge, judgment for setting it aside, and giving possession to the claimants, with mesne profits since the date of suit. *Mahomed Reazoodcen versus Akber Ali Khan*, 13th June 1808, .... I. 238

6. A, a zemindar, grants waste lands to B on a lease, without limitation of period; but with a condition of resumption at any time, on paying the expenses incurred by B in preparing the land for cultivation. A claims to resume on performing the above condition; B pleads Section 8, Regulation VIII. 1793, respecting *jungleboory talooks*, as barring the condition, and rendering his tenure irremovable. Determined that the condition for resumption is legal and valid. *Buldeo Sircar versus Raja Nur Nurain Rai*, 4th March 1813, .. .. II. 49
7. *Mocurruree* leases granted by the collector of Behar in 1788, and sanctioned by Government and the Court of Directors, held not to be annulled by the subsequent promulgation of the general rules for the decennial settlement. *Goolab Nurain versus Pretum Singh*, 7th September 1814, .. .. II. 130
8. In a suit for possession of lands on a *mocurruree*, or fixed *jumma*, the *pottah* was set aside by the Sudder Dewanny Adawlut, as it appeared that it had never been acted upon, and that the lands specified therein had, both previously and subsequently to the date of the execution thereof, been leased out by the grantor, both in *kutkuneh* and *ijareh* to different persons, and at a variable rent. *Raja Gopcenath and another versus Musst. Jyaputtce*, 6th February 1817, .. .. II. 225
9. A *mocurruree pottah*, or lease at a fixed rent, granted by one of the heirs of a deceased *altumghadar*, acting as *mokhtar* [or managing agent] for the rest of the heirs, set aside; it appearing that it had been granted without their knowledge and concurrence, and that he was not specially empowered by them to grant such *pottah*. *Ameer Buksh and others versus Mahomed Mustuqem Khan and others*, 27th February 1817, .. .. II. 230
10. A *mocurruree pottah*, or lease in perpetuity, granted to an under-tenant, subsequently to the enactment of Regulation XLIV. 1793, set aside as contrary to Section 2 of that Regulation. *Meer Meeruk Hosein versus Raja Taj Ali Khan*, 23d September 1818, .. .. II. 273
11. A lease granted by the Collector of Benares, will not at the grantee's death devolve on the grantee's heirs, if it have not been confirmed by the Board of Revenue or Government. Collector of Benares *versus Ooma Bacc* and another, 14th November 1820, .. .. III. 52
12. The surety of a fictitious lessee is not entitled to sue for profits on the plea that the lease had been unjustly cancelled, and that he, the plaintiff, was the real lessee. *Koonj Beharee Lal versus Government*, 26th March 1821, .. .. III. 85
13. A *mocurruree* lease of lands in Behar continued to the heirs of the grantee, the successor of the grantor not proving that it was a life tenure only. *Chowdry Doodraj Singh versus Mahomed Yahia Khan*, 12th April 1824, .. .. III. 332
14. The Court ordered a lease to be cancelled, though it contained no mention of a term; it not being expressly declared to be perpetual, and appearing to have been granted to the same person, on the same day, and for the same lands as a deed of mortgage, and therefore evidently intended only as an additional security for a debt. *Ram Nurain Mitter versus Kali Pershad Rai and others*, 21st June 1824, .. .. III. 372
15. A *mocurruree pottah*, executed by a zemindar in favor of a collector's *dewan*, being declared void under Section 15, Regulation II. 1793, the heirs of the *dewan* were ordered to relinquish possession in favor of the heirs of the zemindar, in consideration of their minority and other circumstances, though the death of the zemindar took place 18 years before the institution of the suit. *Bindrabun Bose versus Baboo Jowaher Singh and others*, 13th March 1826, .. .. IV. 130



16. A claim preferred by any other than the original *mocurrureedar*, or his assignees, to a share of the benefit of the *mocurruree* tenures granted by Mr. Law, in zillah Behar, held to be inadmissible; co-partnership in the *milkeent* originally, not conferring that title. Deo Dut Rai and others *versus* Oodwunt Rai and others, 27th February 1827, . . . . . IV. 226
17. A lease granted in consideration of an advance of a sum of money, held to be equivalent to a mortgage; and the lessee declared liable for such surplus proceeds of the estate as remained after he had realized his principal and interest. Mohunt Theekum Bhartee *versus* Syud Ihsan Ali and others, 16th July 1827, . . . . . IV. 251
18. A received an advance from B, as a loan free of interest, for a given time; and gave a concurrent lease of an estate, at a fixed rent, which was less than the *sudder jumma*, and engaged that B should hold over till paid. A sued B to set aside, as cancelled, the bond, on the ground that the lease was a device to evade the usury laws; that the transaction was virtually a mortgage, and the debt replaced by the profits of the estate. Claim of A dismissed, the transaction not appearing to the Court, as charged, a device and unfair, and the right of B to hold over sustained. Syud Uthur Ali and another *versus* Rai Nowazee Lal, 1st February 1830, . . . . . V. 8
19. A, on the plea of having conditionally sold certain lands to B, obtains possession of them by a summary order of the judge by repayment of the money, and grants a lease thereof for 5 years to C.—B, alleging the sale to have been irrevocable, appeals and regains possession; and the lands having been sold by public auction in satisfaction of a decree and for public revenue, a regular suit is brought by the auction purchasers against A and B, and the sale is declared revocable and the lands adjudged to them. Held, that the lease to C is of no avail to recover profits in an action brought after the revocability of the sale had been judicially established. Surup Chund Sircar *versus* Raja Grees Chunder and others, 15th August 1831, . . . . . V. 139
20. A lessee for life was, by the terms of the lease, restricted to the cultivation of indigo. Held, on a liberal construction, that it was not vitiated by the growth of grain necessary for the support of the cultivators. Raja Grees Chunder Rai *versus* Commissioner of Sunderbunds and others, 16th May 1832, . . . . . V. 205
21. A lease for life to A may be assigned and transferred, and will continue during A's life. *Ibid*, . . . . . V. 205
22. A tenant not having given up possession of two houses after having received warning according to the conditions specified in the lease, it was decided that he should pay the increased rent specified in the notice to quit. Mr. Woodin *versus* Abool Kheir Mahomed Ali, 7th January 1835, . . . . . VI. 15
23. A limited lease containing a stipulation of renewal, without any further limitation or phrase which could be so construed as to confer perpetual or hereditary right on the lessees, was limited by the Sudder Dewanny Adawlut to the term of the natural lives of such lessees. Hurrischunder Dhur *versus* Gunga Dhur Doss and others, 26th January 1836, . . . . . VI. 49
24. A planter, lessee of certain lands for the cultivation of indigo, selling his factory to another and transferring his lease, is nevertheless responsible to the lessor for the rents due under the engagement executed by him as lessee; but has his remedy against the transferee. Motee Baboo *versus* Moses Khachik Arakel, 6th May 1836, . . . . . VI. 67
25. A claim by zemindars for rents of land leased to the defendants dismissed, it appearing that the lands were included in another lease previously given by the lessors to another person. Watson and another *versus* Raja Kishen Chund and another, 1st May 1837, . . . . . VI. 161
26. A zemindar in Cuttack holding his estate under a five years' engagement, was dispossessed by the collector during the last two years of his term,

on the ground of oppression towards the tenantry, and the engagements not having been sanctioned by the superior revenue authorities. In an action for the recovery of possession and mesne profits, the Sudder Dewanny Adawlut held that, under the circumstances, the collector was not justified in ejecting the plaintiff, and awarded him the mesne profits for the unexpired period of his engagement; but passed no order in regard to possession, the term of the engagement having expired. *Government versus Sheikh Fukeerullah*, 20th June 1837, .. .. VI. 171

27. It is not competent to a zillah court, after the expiration of a zemindar's engagement, to direct the collector to restore him to possession, and to enter into engagements with him, though it may declare his prior right of settlement on agreeing to the assessment and other terms fixed by the revenue authorities. *Ibid*, .. .. VI. 171

28. A received an advance from B on executing a lease of certain lands for a specified period, with a further condition that, if the debt was not repaid in full on the expiry of the term of the lease, the lease should be continued to B till the loan was paid. Two years before the lease expired, B was ejected in execution of a decree of the provincial court, for the same lands, obtained by C against A, which decree was reversed by the Sudder Dewanny Adawlut, and the lands restored to A as proprietor. Held by the Sudder Dewanny Adawlut that, under such circumstances, B, the lessee, was entitled to recover and hold possession under the terms of his lease until the payment of the debt due to him by A, notwithstanding the expiration of the term of the original lease mentioned in the engagements. *Girdharce Lal versus Musst. Kadira*, 24th June 1837, .. .. VI. 175

29. Held that a tenant on a perpetual lease has power, even although in balance, of resigning his lease, if he do it formally and at a proper season,—*i. e.* at the close of the year. *Rajah Kishenchunder Bahadloor versus Shunkerece Dasse* and another, 12th June 1844, .. .. VII. 174

See 'Practice,' Nos. 87 and 113.

#### LEGACY.

See 'Legacy,' Part III. Mahomedan Law.

#### LEGITIMACY.

See 'Legitimacy,' Part III. Mahomedan Law.

#### LIBEL.

1. In an action for damages preferred by an uncovenanted judicial officer against a party who had charged him with corruption in the discharge of his official duty, the Sudder Dewanny Adawlut confirmed the decree of the lower court, which awarded to the plaintiff damages to the amount of 1,000 rupees. *Bhyrub Chunder Bose versus Joseph Thomas*, 4th August 1836, .. .. VI. 97

2. An action for recovery of damages for defamation, in consequence of the defendants having in a petition charged the plaintiff, who was post master at Tirhoot, with having clandestinely opened a parcel containing certain papers. The principal sudder ameen dismissed the claim, for (as observed by the court) very unsatisfactory reasons. The court reversed the decree, and awarded 10,000 rupees damages with costs against the defendants. *Mr. McKinnon versus Mahomed Tukee Khan and others*, 15th January 1844, .. .. VII. 149

3. Slander against a female of good character although not of that rank in life which renders her seclusion necessary, may be visited by damages in a civil court. *Rana Khamshana versus Gour Singh and another*, 13th March 1845, .. .. VII. 193

4. Damages were awarded against a party for having falsely charged the plaintiff with *dacoity*; but a police *darogah*, against whom they were also

sought, having acted legally upon that party's information, was exonerated. *Rajah Lukhee Nurain Ray versus Mudden Mohun Adhikaree and others*, 5th May 1845, .. .. VII. 204

5. In an action for damages preferred by plaintiff, a chaplain on the establishment, against a party who had gratuitously aspersed his character in a petition filed in court, the Sudder Dewanny Adawlut confirmed the decree of the lower court, which awarded to the plaintiff damages to the amount of 1,000 rupees. *The Rev. H. Sheppard versus Eknatheens Paniotty*, 5th February 1848. .. .. VII. 433

6. Held that an action for damages for defamation did not lie against a party accusing another of *dacoity*, on which charge he was committed for trial by the magistrate, but acquitted by the sessions judge. *Sonathun Mudduck and others versus Gungagovind Biswas*, 27th May 1848,.. VII.

7. In an action for damages for an alleged false charge against a party in a criminal court, the civil court is not bound by the opinion formed of the case in the criminal court. *Munnee Mohun Mundul versus Moo-doosoodun Mundul*, 8th June 1848, .. .. VII.

See 'Practice,' No. 81. .. .. VII. 204

### LEPROSY.

See 'Leprosy,' Part II. Hindu Law.

### LIEUTENANT GOVERNOR OF THE CEDED PROVINCES.

See 'Rent-free Tenures,' Nos. 14, 15.

### LIMITATION.

1. An estate having been sold to a person by the managing owner of it, and the purchaser having, with the knowledge of the coparceners, retained undisturbed possession of it for upwards of 10 years: this circumstance held by the *pundit* sufficient to give validity to the sale, and bar any plea of its having been obtained by duress. *Prannath Doss and others versus Kali Shunker Ghosal*, 29th August 1801, .. .. I. 46

2. Recovery of part of dower payable on marriage 40 years before, barred from lapse of time. Judgment given for payment of the rest, payable on the husband's death, which occurred only 6 years before the action. *Meer Nujeeboolla versus Musst. Doordana Khatoon*, 21st August 1805, I. 103

3. Defendant pleaded adverse possession during more than 12 years: plea set aside, as he appeared to have had possession for the greatest part of the time as manager only. *Sidh Nurain versus Futeh Nurain*, 16th December 1805, .. .. I. 118

4. Members of a Hindu family, entitled as heirs to shares in the family estate, of which shares, however, during several years, they never demanded separate possession, but allowed them to remain, with other parts of the estate, under the general control and management of another of the sharers, [a member of the family] and received provision in land for their expenses, not debarred from claiming possession of the shares, it not appearing that they had ever consented to relinquish their right as sharers. *Rancee Bhuwan Dibeh and another versus Rancee Sooruj Munec*, 12th May 1806, .... I. 135

*Pertab Nurain and another versus Opinder Nurain and another*, 15th January 1808, .. .. I. 225

5. The rule of limitation cannot affect the right of redeeming mortgaged lands, as tenants in mortgage do not hold under a title capable of forming a right by prescription. *Mehr-o-nissa Khanum versus Musst. Budamoon and others*, 25th May 1807, .. .. I. 187

6. The plea of lapse of time will not avail against a claimant during the period of his minority; and the time can only be reckoned against him from the period of his coming of age. *Imaum Buksh Khan versus Nuwab Dilawur Jung*, 22nd June 1807, .. .. I. 192

7. In a claim for lands, of which possession had been fraudulently obtained, the limitation of time can only be counted against the claimants from the date on which the fraud was discovered. *Mahomed Reazooddeen versus Acbar Ali Khan and others*, 13th June 1808, . . . . . I. 239

8. Claim by the heirs of a Mahomedan widow to a *talook*, as having belonged to her, adjudged on proof of her title to it; her husband having made it over to her at his death, in satisfaction of dower settled on her at her marriage; and she having held it till her decease [33 years], without her title having been disputed by any of her husband's heirs. *Mirza Mahomed and another versus Jareut-ooz-zohra Begum and others*, 22nd July 1808, I. 243

9. Claim to the recovery of lands alleged to be the claimant's right of inheritance, barred by lapse of time, under Section 15, Regulation III. 1793, as well as under Regulation II. 1805, the defendant, or his ancestor appearing to have held *bonâ fide* possession for more than 12 years antecedent to the suit. *Lal Rooder Pertab Singh versus Lal Dhokul Singh*, 2nd September 1808, . . . . . I. 253

10. On the claim of a person against the son of his brother for a share of an estate, it appearing that the defendant and his father had held adverse *bonâ fide* possession for more than 12 years, the claim was disallowed. *Rudha Churn Mohapater versus Gunga Nurain Mohapater*, 5th March 1810, . . . I. 297

11. In a suit in the zillah court of Cuttack for possession of an estate as the plaintiff's right of inheritance from a banker, [who died 19 years before], it appearing that the ancestor of the defendant, though not the rightful heir, had obtained a public order from the late Government, constituting him proprietor of the estate: and that possession had been held accordingly for 14 years prior to the introduction of the British authority into the district; the claim held by the Sudder Dewanny Adawlut not to be cognizable under Sections 5 and 6, Regulation XIV. 1805, which restrict the courts from interfering with acts of the native government, or with suits in which the cause of action may have arisen more than 12 years before the acquisition of the district. *Umrut Ram Chowdry and others versus Kesuree Bacc and another*, 27th February 1811, . . . . . I. 314

12. Claim to the amount of a decree in favor of the ancestor of the plaintiff, passed 24 years before, disallowed on presumption arising from lapse of time and other circumstances, that it had been satisfied. No institution fee levied, and one-fourth only of the regular costs made payable as in summary suits. *Mirza Hussun Ali versus Mirza Shureef and others*, 5th March 1811, . . . . . I. 317

13. Claim by appellants to certain lands disallowed, as barred by the rule of limitations; 21 years having elapsed from the date of proclamation inviting their ancestors to sue to the date of the institution of the suit. *Byjnath Singh and others versus Syud Hosein Khan and others*, 3rd March 1821, . . . . . II. 1

14. A having borrowed money from B, pledges certain lands to him, and goes on a pilgrimage: after 50 years, in which A is not heard of, his heirs sue to recover the land on payment of the amount borrowed. Adjudged, on the presumption of A's death, the claim not being barred by the rule of limitations. *Bulraj Rai versus Pertaub Rai and others*, 17th March 1812, II. 4

15. Clause 4, Section 3, Regulation II. 1805, provides that no length of time 'shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property of cases of mortgage or deposit, wherein the occupant of the land or other property may have acquired or held possession thereof as mortgagee or depositary only, without any proprietary right.' *Bulraj Rai versus Pertaub Rai and others*, 17th March 1812, . . . . . II. 5

16. The plaintiffs having been irregularly dispossessed from their lands by Government, were allowed the full benefit of the rule of limitations for

- the cognizance of civil cases. *Vakeel of Government versus Rajesri Dibia and others*, 30th August 1815, . . . . . II. 166
17. The prohibition against the trial of suits, the cause of action in which may have arisen previous to August 1765, is applicable to the districts of Burdwan, Chittagong, and Midnapoor, ceded in September 1760, in common with other parts of the provinces included in the *Dewanny* grant in 1765; no distinction being made in the Regulations. *Vakeel of Government versus Rajesri Dibia and others*, 30th August 1815, . . . . . II. 156
18. Execution of a decree 13 years after the date thereof disallowed. *Juggurnauth Pershad Sircar versus Radha Nath Sircar and others*, 16th November 1818, . . . . . II. 280
19. The right of a Hindu widow is not necessarily forfeited by her omitting to apply for separate possession of her husband's undivided share for more than 12 years after his death. *Musst. Dhunmunee versus Sonatun Sahoo and others*, 3rd May 1820, . . . . . III. 30
20. Claim by a Mussulman woman to a share of her deceased father's property, dismissed as not having been preferred for more than 12 years after his death. *Musst. Zureenah Beebee versus Khajeh Ali and others*, 9th May 1820, . . . . . III. 32
21. In a suit by a Hindu for a share of his maternal grandfather's property, held that the rule of limitation should be reckoned from the period of his mother's or grandmother's death, and not from that of his grandfather's second widow, who got possession under a decree of court; his right having begun to accrue on the death of the former persons. *Ramdihum Sein and others versus Kishen Kunt Sein and others*, 17th July 1821, . . . . . III. 100
22. In a claim preferred after the period prescribed by the Regulations, it is not requisite to declare that the adverse possession was acquired by fraud or violence, if that can be gathered from the plaint. *Tubeeb Shah versus Budder Oodeen*, 24th July 1822, . . . . . III. 162
23. In a suit by a joint proprietor to separate possession of his share, the defendant urging that he had exclusive possession long before the Company's Government, without being able to prove exclusive right, held that the rule of limitation does not apply. *Bhowanee Buksh versus Khert Singh*, 20th January 1823, . . . . . III. 202
24. Held that lapse of time does not bar the right to a division of a joint estate, the several proprietors of which had entered into separate engagements for their respective shares, though such shares had not been actually separated. *Kirt Nurain Doss and others versus Raj Kooniar Rai and others*, 14th March 1823, . . . . . III. 219
25. The heir of a widow claims her dower from her late husband's estate, under a deed executed by him before the Company's accession to the *Dewanny*; held that the claim is inadmissible, the truth of the demand not having been acknowledged within 12 years prior to the institution of the suit. *Mahomed Yar Khan versus Mahomed Eesan Khan*, 6th January 1824, . . . . . III. 292
26. Claim to a small portion of land in the city of Benares, dismissed on presumption that it had been resumed by the former Government, and had been occupied by the Company full 20 years. *Sheo Pershad and another versus Collector of Customs at Benares*, 17th May 1824, . . . . . III. 354
27. A summary decision passed by a zillah court in 1796, and confirmed by the provincial court in 1797, left to the party out of possession the option of suing to establish his claim to certain lands; held, that as no action had been instituted till 1815, the right of action was barred by the rule of limitations. *Ram Koomar Neeai Bachesputtee versus Sri Nath Buttacharj and others*, 25th January 1825, . . . . . IV. 14
28. Claim to the possession of a *talook* barred by the rule of limitation, the reasons urged by the claimant for omitting to urge his claim at an

- earlier period appearing insufficient. *Kishen Dhun Sircar and others versus Musst. Nujeeba Beebee*, 12th March 1825, . . . . . IV. 29
29. Case of succession to one of the tributary estates of zillah Cuttack : decision in favor of the plaintiff by the superintendent reversed, and the claim dismissed, being barred by Section 4, Regulation XI. 1816, which prohibits cognizance of suits in which the cause of action may have arisen prior to the cession of the district. *Raja Sham Soonder Muhunder versus Kishen Chunder Bhowarbur Rai*, 22d March 1825, . . . . . IV. 39
30. Claim to set aside the award of arbitrators after a silence of 10 years dismissed. *Mozuffer Ali Khan versus Fakeer Chand and others*, 22d March 1825, . . . . . IV. 46
31. Claim for possession of an estate barred by the rule of limitation, the adverse party having been in possession under a deed of sale upwards of 20 years. *Zorawur Singh and others versus Zor Singh and others*, 21st July 1825, . . . . . IV. 87
32. Claim for a share of ancestrel property adjudged, the rule of limitation not being applicable to the case of *putteedars* deriving a share of profit. *Surroop Singh versus Dhowkul Singh and others*, 21st September 1825, . . . . . IV. 91
33. A lease granted by a zemindar to the *deewan* of a collector set aside, (notwithstanding the death of the zemindar took place 18 years before) in consideration of the minority of his heirs and other circumstances. *Budrabun Bose versus Baboo Jowahir Singh and others*, 13th March 1826, . . IV. 130
34. Held that a proprietary claim to lands situated in Cawnpore is not cognizable under Regulation II. 1805, there not having been any possession on the part of the claimants or their ancestors for 38 years before the Company's acquisition of the provinces; and no claim having been preferred on their part at either of the first three settlements. *Murdun Singh and another versus Khyrat Ali and others*, 25th September 1826, . . IV. 185
35. The period of 60 years specified in Clause 3, Section 3, Regulation II. 1805, held not applicable to a suit for lands in Allahabad, instituted upwards of 12 years after the date of the cessions; the cognizance of which is prohibited by Section 18, Regulation II. 1803. *Mahomed Hosem versus Gunput Singh and others*, 24th July 1827, . . IV. 254
36. A made a grant of part of his hereditary estate in Shahabad to B : on B's death his grandsons C and D [living their father E] succeeded. F [his father A living.] sued C, D and E to set aside the grant, as illegal under Hindu law, and recover the estate under an assignment from A. Ruled that F's suit is barred by the quiet possession of B, C and D during a term exceeding 12 years. *Gopal Chuud Pundeh and another versus Baboo Koonwur Singh*, 3d April 1830, . . . . . V. 24
37. Government having confiscated an estate of which the contracting and ostensible sole owner had been slain in rebellion, in which his two brothers had participated; the suit of the son of one brother [confined for his offence,] for one-third of the estate, in right of inheritance, declared barred by the confiscation, as well as by long quiet possession of the grantee of Government. *Mahiput Singh versus Collector of Benares and another*, 29th May 1830, . . . . . V. 32
38. A died in 1790 : his natural son B, and his uncle C, obtained from the Supreme Court letters of administration\* to his estate, accounts of which they filed in 1796. Soon after C died; and D, the daughter of another uncle, also died in 1808. In 1815, her representative E sued for the real estate of A, as heir at law, and in 1820 obtained judgment for one-third, on the ground that B, C and D had, with mutual acquiescence and equal rights, jointly taken the succession, and C had bequeathed his share to B. In 1822, E sued B for a third of the personal estate generally

as per schedule; but was nonsuited. By direction, he in 1827 brought an action for one-third of a particular debt in the schedule. E recovered, and it was ruled that he was not stopped by prescription, because D had died within 12 years from the last instalment of the debt recovered, within 12 years from D's death E had brought his action for one-third of the personal estate of A; and B as administrator, [as avowed by the terms of the schedule,] was trustee and depositary on behalf of D and others. *Mariam Beebee and others versus Khajeh Avietic Ter Stephanos*, 7th February 1831, . . . . . V. 84

39. The heirs of a *Moslim* recovered their shares in his estate, against his widow, who had taken the same. Her plea of set off for dower debt, was not tried, and she was referred to her civil remedy in that regard. Under these circumstances, in her subsequent action brought against the heirs, she recovered her claim,—the lapse of more than 12 years notwithstanding. *Sheikh Beebee versus Rancee Buksh Beebee*, 24th March 1831, . . . . . V. 105

40. Of two widows of a Hindu, one had succeeded and administered to his estate, and had sold part under necessity. Action of the other, for the half, brought at the end of 20 years, is dismissed on defect of cause shewn, [such as fraud] which might bar the rule of limitation. *Radha Muneo Dwya versus Sooruj Muneo Dwya and another*, 31st May 1831, . . . . . V. 120

41. Where the fraudulent holder of estates had alienated the same to various vendees, to whom no fraud was imputable, it was held under Section 3, Regulation II. 1805, that the plaintiff [a secluded lady and resident of a distant province] might recover her share in the estates, which the vendees had not held 12 years, under a title believed good; the omission of the plaintiff to sue during 25 years notwithstanding. *Kutbi Begum versus Kalah Ali and others*, 31st May 1831, . . . . . V. 123

42. In 1211 F. S., the Board of Revenue had separated from A's assessed estates five *meahals* [recovered at law by B] at a *jumma* deemed just, though much less than the amount imputed to the *meahals* in the details of A's contract. In 1225 F. S., A's heir sued Government and B, to recover the difference for 13 years. Ruled that the claim was not cognizable under general circumstances; and, in particular, under Section 26, Regulation XXV. 1793; his remedy under which had been indicated by the provincial court of appeal in 1212 F. S., in an order on a petition of A. *Raja Chutter Singh versus Government and others*, 19th July 1831, . . . . . V. 130

43. A personal claim was held not to be barred by lapse of time, where the validity of an engagement on which it was brought had been put in issue, [though as a collateral matter,] by the obligor, in a former action which was decided after 12 years' litigation, the claim being preferred within that period from such final decision. *Gocul Chunder Goh versus Raja Kali Shunker Ghosal*, 5th December 1831, . . . . . V. 151

44. Plaintiff held not to be prescribed, where it was shewn that within 12 years he pursued his claim, though not before the proper tribunal, and his petition for redress was pending when the term expired: this was ruled in a case of illegal sale to recover revenue, where the plaintiff had petitioned the revenue authorities to set aside the sale, and his petition for relief was pending when the time expired, incompetency of those authorities to afford relief notwithstanding. *Roop Chund Sahee and another versus Jewun Lal Roy and others*, 31st January 1832, . . . . . V. 168

45. Petitioner's estate was sold in 1803. Objecting to the sale, and not obtaining redress from the revenue authorities, he presented a petition in 1807 to the provincial court, by whom he was requested to apply to the Revenue Board. Ten years after 1807, he did apply to the Board, who, on the 17th February 1818, referred him to the civil court. On the 5th December 1829, [viz., after a lapse of 11 years

and nearly 10 months] he instituted his suit in zillah Behar. The zillah judge dismissed the suit as being barred by the rule of limitation; and the Sudder Dewanny Adawlut confirmed the dismissal. On application for review, the question arose whether the petitioner could be considered to have saved his right of action, by suing within 12 years from the date on which he was referred by the Board of Revenue to the civil court? or must the period within which he is bound to institute the suit be reckoned from the date of the order of the provincial court, referring him to the Board? The majority of the Calcutta Court, and the whole of the Western Court held that the cognizance of the claim is barred under the general rule of limitations. Case of Omrao Singh Petitioner, 12th August and 9th September 1836, . . . . . V. 175 Note.

46. Before and after the decennial settlement, several *talooks* were registered in the names of different persons as component of a *mehal*, with specification of arrears and *quotas*, completing general assessment thereon. Each *talook* was considered as *huzoorie*. In 1791, A's name was omitted from a revised list; and he after four years petitioned the revenue authorities against this. In 1817, A sued B for right to recover as *huzoorie*, and to recover lands of the *talook* from which [a trifle excepted] he alleged ejection in 1807. He pleaded that awaiting the decision of the Board on his protest, by order of the collector, up to 1807, he paid revenue through B as his under-tenant. Claim dismissed with reference to *laches* of A, and defect of proof of ejection. *Malic Yakoob and others versus Jug Jewun Dhar and others*, 3d April 1832, . . . . . V. 179

47. Where A had bought part of the lands of an alleged endowment and kept possession 34 years, held that the claim of the heir of the grantor was barred by prescription. A's holding was found *bond fide*, because the endowment was only nominal, and the purchase by him had been made with the privity of the plaintiff and his ancestor without opposition. *Raja Mahtab Chund versus Mordad Ali and others*, 19th February 1833, . . . . . V. 268

48. A brought an action against B and C to recover a share of an estate, which B, his brother, in whose name it had been bought, had alienated to C 24 years before the institution of the suit, and 22 years before the death of C. Rule of prescription held to be barred by the fraud of C, indicated by the adduction, in a prior suit, of a deed set aside therein, to prove assent of A to alienations made by B. Judgment passed by two judges in opposition to one, who inferred privity and assent of A from other circumstances, and considered the claim barred by long adverse possession. *Pram Kishen Neogee and another versus Sudderoodeen Chowdry and others*, 9th September 1833, . . . . . V. 323

49. In a mixed action (real for the recovery of an estate, and personal as regards its mesne profits during tortious possession) the plaintiff by judgment of the Sudder Dewanny Adawlut recovers the estate, under exception of fraud, which by Clause 1, Section 3, Regulation II. 1805, bars the rule of prescription; but judgment for *mesne profits* antecedent to action not passed. *Pram Kishen Neogee and another versus Sudderoodeen Chowdry and others*, 9th September 1833, . . . . . V. 324

50. The rule of limitation would be barred by detention in a foreign country. In a case of inheritance it was held to be barred by remittance of money and goods by the present to the absent co-heir. *Nityanund Upadhyay versus Sokraman Upadhyay and others*, 22d February 1834, . . . . . V. 342

51. Under Section 63, Regulation VIII. 1793, A brought an action against B for having refused to give him receipts for rents paid. The suit was dismissed with costs, because no dishonest intention was proved against B, and because A had not brought his suit within one year from the date when the cause of action originated, as required by Section 7, Regulation II.



1805. Ram Nurain Mokerjee *versus* Sumbhoo Chunder Mokerjee, 14th April 1835, .. .. VI. 26

52. The plaintiffs under a judgment in their favor obtained possession of certain lands. On the expiration of nearly 12 years from the date of their obtaining possession, they sued for mesne profits with interest. No cause of delay being shewn, the Sudder Dewanny Adawlut awarded principal only. Gooroo Pershad Fotehdar and others *versus* Komulakunt Bose and others, 5th February 1836, .. .. VI. 52

53. The courts of the principal sudder ameen and the zillah judge having decided a suit, ruling that according to Mahomedan law a woman is not competent to execute a deed of relinquishment [*ibranameh*] of her patrimonial property in favor of her brother to the detriment of the legal heirs: the Sudder Dewanny Adawlut, in special appeal, would not go into the question of the legality or otherwise of the deed, but, reversing the decisions of the lower courts, dismissed the claim on proof of uninterrupted possession for a period of 15 years. Shumr-o-nissa and others *versus* Tunnoo Beebee, 1st March 1836, .. .. VI. 58

54. The plaintiffs sued for the estate of a Mussulman under the law of inheritance, and obtained a decree in the zillah and provincial courts against the defendants, who pleaded in bar of the action a special assignment. The Sudder Dewanny Adawlut reversed the decrees, and dismissed the claim on the ground of long adverse possession of the defendants and their ancestor. Meer Moobaruck Ali *versus* Musst. Mujjo and others, 30th June 1836, .. .. VI. 74

55. The plaintiff, a *putneedar*, sued to obtain an assessment on certain lands held at a fixed rent, under an alleged *malgoozaree ayma* grant. Claim dismissed on proof that the grant was dated previous to the decennial settlement, and that the *ayma* lands had been registered in the collector's office as a separate *mehal* prior to the date of the acquisition of the estate at public sale by the zemindar from whom the plaintiff purchased his *putnee* tenure. Fukeer Chund Sem *versus* Pran Kishen Haldar and others, 20th July 1836, .. .. VI. 86

56. The admission of the plaintiff's right to compensation, on account of certain *khillarees* taken possession of by Government, made by a salt agent within the period of 12 years antecedent to the institution of the suit, held to be sufficient to render the case cognizable under the rule of limitation. The Salt Agent at Jessore *versus* Rada Mohun Chowdry, 22d December 1836, VI. 135

57. A right of action lost under the law of limitation, during the life-time of the party in whom the right originally vested, cannot be revived by his heir after his death. Neel Muneo Pal Chowdry and another *versus* Raja Burdakaunth Roy, 4th January 1837, .. .. VI. 139

58. The plaintiffs sued for the rents of land held by the defendants, due for a period of 14 years, alleging the existence of another action for other lands between the same parties to account for the delay in the institution of the present action. \*Held by the Sudder Dewanny Adawlut that no sufficient cause had been shewn to bar the application of the rule of limitation laid down in Section 14, Regulation III. 1793. Ruttun Dossea and others *versus* Shunkurree Dossea and others, 28th May 1838, .. VI. 231

59. A suit to enforce execution of a summary decree for rent, instituted upwards of 12 years from the date of the decree dismissed. Omeschunder Pal Chowdree and another *versus* Issur Chunder Pal Chowdree and others, 18th January 1841, .. .. VII. 2

60. A mere application for permission to sue in *forma pauperis* is not a preferring of a claim within the meaning of the rule of limitation laid down by Section 14, Regulation III. of 1793. Sheikh Sufdur Alli and others *versus* Dutt Nurain and another, 30th January 1838, .. .. VII. 8

61. In an action for recovery of surplus payments of rent, the cause of action in which commenced at the date of an order of court, the Sudder Dewanny Adawlut applied the rule of limitation calculating the period of 12 years from the date of such order, notwithstanding that the plaintiff had made certain summary applications to the court in connection with the same proceedings subsequently to such date. Sham Loll Thakoor and others *versus* Radamohun Ghose, 6th October 1841, .. .. VII. 50
62. A suit for the recovery of property purchased at a public sale against the ostensible purchaser, on the ground that the plaintiff's ancestor was the real purchaser, instituted upwards of 12 years after the date of purchase, held to be barred under the law of limitation. Kishore Munnee Dossee *versus* Sreekunt Sen and others, 4th January 1842, .. .. VII. 67
63. In calculating the period for bringing an action, under the general rule of limitation, no allowance can be made for the time during which a mere application for permission to sue *in formâ pauperis* is pending in court. Ruhm Khan and others *versus* Bikram Sahce and others, 11th June 1842, .. .. VII. 96
64. The plaintiff having first sued in the Supreme Court to redeem certain lands sold at a Sheriff's sale, and obtained a decree, now sues the present defendants [who could not be made parties to the suit in the Supreme Court for want of jurisdiction] to recover possession of the same property, which is held by them under a title derived from the purchaser at the Sheriff's sale: the suit in the Supreme Court having been commenced within the period of 12 years of the adverse possession of the defendants, it was held by the Sudder Dewanny Adawlut that the suit in the *mofussil* court, though commenced after the expiration of 12 years of such possession, was not, under the circumstances, barred by the rules of Section 14, Regulation III. 1793, and Clause 3, Section 3, Regulation II. 1805. Prannath Chowdree and others *versus* Rajah Burroda Kant Roy, 16th June 1842, .. .. VII. 97
65. Claims to the entire estate of a deceased Mahomedan having been set up by his widow and brother, neither of which appeared to be well founded, the period of limitation for the institution of an action by his heirs at law was calculated from the date of his death, and not from the date of the decree between his widow and brother. Syud Hussein Reza *versus* Ameer-o-nissa and others, 22nd April 1843, .. .. VII. 124
66. Held that an entry in an account of a sum of money payable to a female on her marriage, and bearing interest, *ad interim*, is not of the nature of a deposit provided for under Clause 4, Section 3, Regulation II. 1805, but is subject to the ordinary rules of limitation. Catchick Mackertick *versus* Aratoon Harapiet Aratoon, &c., 15th May 1844, .. .. VII. 161
67. The law of limitation does not apply to a claim to a reduction of rent on account of diluvion, preferred during the course of diluvion; but if delayed beyond 12 years after its cessation, the claim would be barred. Musst. Shama Soondery and others *versus* Mirza Ahmud Jan and others, 23rd July 1843, .. .. VII. 209
68. The rule of limitation does not apply to a suit for an adjustment of rents. Meertinjay Shah and others *versus* Baboo Gopal Lal Thakoor, 3rd December 1845, .. .. VII. 217
69. An order of nonsuit having been passed in an action, (brought within time) for reversal of a summary award of the revenue authorities under Regulation VIII. 1831, held that the period during which such action was pending is not to be included within the limitation of one year prescribed by Section 6 of that Regulation, in the event of the institution of another suit. Cheedam Mundul *versus* Bykuntath Dutt and others, 25th November 1846, .. .. VII. 128

70. Special claims to the property of a deceased *Moslem* having been dismissed, and the property declared divisible amongst his heirs, held that the claim of the heirs is not barred by the rule of limitation, as that period must be calculated from date of decision pronouncing their right to share in the property. *Syud Hosein Rezza versus Ameer-o-nissa*, 12th June 1847, .. .. VII. 316

71. A case was remanded because no notice had been taken of defendants' plea of adverse possession of the lands for 20 years. *Sunkur Roy and others versus Surbjeet Roy and others*, 24th June 1847, .. VII. 349

72. In calculating the period of limitation in the case of a claim non-suited, a deduction should be made of the time it was pending in the courts. *Ameer Hosein and another versus Abdool Wahab and others*, 26th July 1847, .. .. VII. 376

73. Construction No. 813 only refers to a miscellaneous application by a plaintiff preferring a claim, and not to the admission of a claim by a defendant. *Watson and Co. versus Pursunnonath Race and Sunkurree Dassen*, 16th August 1847, .. .. VII. 383

74. A party to be entitled to the benefit of the special rule of limitation, must, in the court of first instance, specifically set forth the nature of the fraud, and distinctly plead for a hearing under Clause 2, Section 3, Regulation II. 1805. *Musst. Ommut-o-zuhra Begum versus Lootfoollah Khan*, 30th September 1847, .. .. VII. 399

75. Deduction was made of the period of minority of plaintiff, against whose claim the law of limitation was pleaded. *Collector of Rungpore and another versus Gudhadhur Chowdree and others*, 2nd March 1848, VII. 443

76. The general law of limitation is inapplicable to suits instituted by zemindars for the resumption of rent-free tenures. *Sheikh Shufaetoollah versus Joykishen Mookerjee and others*, 20th May 1848, .. .. VII.

See 'Limitation,' Part II. Hindu Law.

Part III. Mahomedan Law.

'Dower,' No. 37.

'Mortgage,' No. 63.

'Practice,' No. 131.

'Inheritance,' No. 2.

## LINEAL DESCENT.

See 'Lineal Descent,' Part II. Hindu Law.

.. .. Part III. Mahomedan Law.

## LOHA MEHAL.

1. Claim by plaintiff to certain *aurungs*, or iron manufactories, situate within the estate of the defendant, in the district of Beerbhoom, and to the proprietary dues levied on the iron ore therein manufactured, adjudged in favor of the plaintiff; it appearing that the *aurungs* in dispute, and the revenue derived from the iron there manufactured, were distinct from the property in the soil, and comprehended in general the *loha mehal* of the late Beerbhoom zemindaree, which *mehal* the plaintiff had purchased at public sale. *Gooroo Pershad Bose and others versus Bishnoo Churn Heyra*, 31st July 1811, .. .. I. 337

## MAHABRAMIN.

See 'Mahabramin,' Part II. Hindu Law.

## MAHOMEDAN LAW.

See Part III.

## MAINTENANCE.

See 'Maintenance,' Part II. Hindu Law.

.. .. Part III. Mahomedan Law.

MAJORITY.

See 'Majority,' Part II. Hindu Law.

MALIC.

See 'Settlement,' No. 11.  
'Pre-emption,' No. 4, Part III. Mahomedan Law.

MALIC MOCUDDUM.

See 'Settlement,' No. 11.

MALIKANA.

See 'Auction Sales,' No. 30.  
'Invalid Jaghire,' No. 1.  
'Rent-free Tenures,' No. 13.

MANAGER.

See 'Agents,' No. 14.  
'Banking House,' No. 2.  
'Debts,' Nos. 6, 10, 14.  
'Limitation,' No. 1.  
'Rent-free Tenures,' No. 20.  
'Sale,' No. 13.  
'Acquisitions,' Nos. 5, 18, 19, Part II. Hindu Law.  
'Dower,' No. 14, Part III. Mahomedan Law.

MANNA.

See 'Actions,' No. 4.

MARRIAGE.

See 'Marriage,' Part III. Mahomedan Law.

MASTER AND SERVANT.

1. The heirs of a native treasurer of the late Raja of Benares having been sued for a sum of money, which was proved to have been remitted to Calcutta by order of the raja for a corrupt purpose, the suit was dismissed, as the remittance was authorized by the raja, whose successor might bring an action against the person by whom the money was corruptly received of his representatives. *Raja Ooditnurain Singh versus Casinath and others*, 24th April 1807, . . . . . I. 183

MATERNAL AUNT. .

See 'Maternal Aunt,' Part III. Mahomedan Law.

MATERNAL UNCLE'S SON.

See 'Maternal Uncle's Son,' Part II. Hindu Law.

## MEASUREMENT.

1. A measurement by a collector made at the time of entering into engagements with a zemindar, is no bar to the zemindar's re-measuring the lands to ascertain the extent of the holdings of his tenants. Government *versus* Sheikh Fuckerullah, 20th June 1837, .. .. VI. 171

See 'Arrears of Rent,' Nos. 2, 3.  
 'Assessment,' Nos. 6, 12, 24.  
 'Talooks,' No. 16,

## MEHNUTANA.

See 'Interest,' No. 19.

## MESNE PROFITS.

1. The award of mesne profits at a rate exceeding that originally claimed reduced. Ramdhon Majoolea and others *versus* Jeyeram Chatterjea, 17th August 1847, .. .. VII. 387

See 'Actions,' No. 3.  
 'Amount of Action,' No. 1.  
 'Damages,' No. 5.  
 'Interest,' Nos. 28, 32, 37.  
 'Leases,' No. 5.  
 'Limitation,' No. 52.  
 'Mortgage,' No. 38.  
 'Practice,' Nos. 22, 48, 67, 69.  
 'Rent-free Tenures,' Nos. 25, 27.  
 'Talooks,' No. 11.  
 'Third Party,' No. 1.  
 'Endowments,' No. 3. Part II. Hindu Law.  
 'Pre-emption,' No. 3. Part III. Mahomedan Law.  
 'Sales,' No. 2, Part III. Mahomedan Law.

## MESSING TOGETHER.

See 'Messing together,' Part II. Hindu Law.

## MINOR AND MINORITY.

See 'Debts,' Nos. 4, 7, 9.  
 'Limitation,' Nos. 6, 33.  
 'Security,' No. 1.  
 'Engagements,' Part II. Hindu Law.  
 'Majority,' *passim*, Part II. Hindu Law.  
 'Dower,' No. 27. Part III.  
 'Gifts,' Nos. 8, 12. Part III. } Mahomedan Law.  
 'Marriage,' Nos. 5, 7. Part III. }

## MISREPRESENTATION.

See 'Rent-free Tenures,' Nos. 19, 24,

## MISSING PERSON.

See 'Absentee,' *passim*.  
 'Limitation,' No. 1. Part II. Hindu Law.  
 'Inheritance,' Nos. 29, 30, 45. Part III. Mahomedan Law.

## MISTRESS.

See 'Mistress,' Part III. Mahomedan Law.

## MOCUDDUMMEE TENURES.

See 'Assessment,' No. 19.

'Talook,' No. 15.

## MOCURRUREE TENURES.

See 'Assessment,' Nos. 2, 15, 18, 21, 22, 26.

'Leases,' Nos. 5, 7, 8, 9, 10, 13, 14, 15, 16.

## MOCURRUREEDAR.

See 'Pre-emption,' No. 4. Part III. Mahomedan Law.

## MOHUNT.

See 'Mohunt,' Part II. Hindu Law.

## MOONSIFFS.

1. The direction of a Principal Sudder Ameen to a Moonsiff to receive a supplemental plant was declared to be illegal. Gour Kishore Dutt and others *versus* Kishen Kinkur Sirkar, 27th May 1847, .. .. VII. 309

## MOOSTAJIR.

See 'Settlement,' No. 14.

## MOOTUWULLEE.

See 'Mootuwullee,' Part III. Mahomedan Law.

## MORTGAGE AND CONDITIONAL SALE.

1. A *bye-bil-wufa* sale of land, made by an agent on the part of the owner, declared void in Mahomedan law from the agent having exceeded his powers,—from its being a sale at gross inadequacy of price,—and from the presumption of collusion between the buyer and agent. Meer Aleemoola *versus* Ahf Khan, 30th September 1801, .. .. I. 55

2. The intention of the parties, as collected from the tenor of the deed, shews whether the *bye-bil-wufa* be a sale with the reserve of the option of retraction within a limited period, or a mortgage for the security of money lent. A stipulation for a short period must be considered to mark that a sale was in contemplation of the parties: a long term denotes a mortgage, or security for a loan. Ibid, .. .. I. 57 Note.

3. In a suit between the heirs of an *aymadar*, their respective shares were decreed; but it appearing that the lands were in possession of a third party, who were alleged by the heirs to hold them in mortgage, the alleged mortgagees, when called upon, stated themselves to hold as proprietors paying a fixed rent to the *aymadar's* heirs. The Sudder Dewanny Adawlut therefore adjudged a share of the rent receivable, and not of the land, leaving the claimant, who objects to the asserted tenure of the possessors, to sue them if he think fit. Beebee Jugun *versus* Bakur Ali and others, 7th May 1804, .. I. 78

4. Opinion given by the Mahomedan law officers of the Sudder Dewanny Adawlut, that a deed termed a deed of *bye-bil-wufa*, executed on

- land for a sum of money in favor of a person *through* whom, and not from whom the money was borrowed, is not valid in Mahomedan law. *Ibid.* I. 78
5. Claim by appellants to the redemption of lands, on which they had executed deeds of mortgage and conditional sale redeemable within a certain time, on a plea that payment of the amount was tendered within that time. Judgment against the appellants, no such tender being proved. Sheikh Mahomed Ali and another *versus* Kasu Ram and others, 22d May 1805, . . . I. 90
6. Claim by appellant for balance of principal and interest alleged to be due on a mortgage. Judgment against appellant, it appearing that the special condition of the mortgage only entitled the mortgagee to receive usufruct as interest, though lower than the legal rate, leaving the time of redeeming the mortgage, by the payment of the principal lent, at the option of the mortgagers. Beharee Lal *versus* Musst. Phékoo and another, 18th December 1805, . . . I. 119
7. Had the usufruct exceeded the legal rate of interest, the excess would have gone to the liquidation of the principal under the operation of Section 10, Regulation XV. 1793. Beharee Lal *versus* Musst. Phékoo, 18th December 1805, . . . I. Note. 121
8. Claim by respondent to half the value of a diamond, of which his late father was joint proprietor with his uncle, and which the latter had pledged to the appellant. The pledge was not admitted to affect respondent's right, and judgment given in favor of his claim. Shewa Doss *versus* Bishen Nath Dohce, 10th February 1806, . . . I. 126
9. Claim to an estate, under a written engagement for the conditional sale of it, on failure of re-payment of a loan of money by a certain day. Construed, from circumstances, that the actual sale of land was not intended, but only security for the loan. Judgment for the estate being retained on re-payment of the principal and interest of the loan by the appointed time. Rancee Jugdesree *versus* Poorun Chund Sri Mal, 17th June 1806, . . . I. 143
10. Claim by appellant to the possession of certain lands sold to him at auction by the Sheriff of Calcutta. Judgment against the claim, on proof that the lands were previously mortgaged and conditionally sold to respondent. Petumber Ghose *versus* Ghureboolla, 3d October 1806, . . . I. 167
11. Claim to the possession of an estate, mortgaged with conditional sale, to become absolute at the end of a term, now expired. Judgment for the mortgager, on proof that offers of clearing the mortgage were made within the term, and evaded by the mortgages. Beijnath Sahoo *versus* Vuzeer Singh, 1st December 1806, . . . I. 168
12. Claim by the heir of a mortgager to recover certain mortgaged lands dismissed; the mortgage, which provided for the usufruct being received is interest, until the lands should be redeemed by the payment of the principal lent, not appearing to have been cleared. Meher-o-nissa Khanum *versus* Musst. Budamoon and others, 25th May 1807, . . . I. 185
13. Had the usufruct exceeded the legal interest, it would have been receivable as interest down to March 1780, after which the legal interest only would have been allowed to the mortgagee, the surplus being made applicable to the discharge of the principal. *Ibid.* . . . I. 185
14. Adjudged, however, that the right of redemption could not be barred by the lapse of time, under the rule of limitation; and that the mortgage would be redeemable at any time by payment of the principal lent. *Ibid.* I. 185
15. The rule of limitation was ruled not to bar the redemption, in case of an assignment analogous to a mortgage. J. Queiros *versus* Khodeja Begum and others, 20th July 1807, . . . I. 203
16. Claim to principal and interest of a mortgage bond, adjudged, together with interest accruing during the trial of a suit. Musst. Mukhum *versus* Mohund Ram Pershad, 15th July 1808, . . . I. 242

17. In a suit for possession of land, the property of the plaintiff, to which the defendant pleaded a mortgage from the plaintiff's ancestor, dated 60 years before, and urged lapse of time against the claim: that plea not being of avail in cases of mortgage under Regulation II. 1805, adjudged that the plaintiff recover on redeeming the mortgage. *Chotee Lal versus Perbhoo Nurain and others*, 27th November 1809, . . . . . I. 292

18. Appellant's claim to the moiety of an estate, adjudged on proof that it was the joint inheritance of the parties, though a mortgage debt contracted under the management of the respondent's father was paid by the respondent. *Sheikh Bhikaree versus Emaumi Buksh*, 5th November 1811, I. 355

19. A having borrowed money from B, pledges certain lands to him, and goes on a pilgrimage. After 50 years, during which A is not heard of, his heir sues to recover the lands on payment of the sum borrowed; adjudged on the presumption of A's death, and the claim not being barred by the rule of limitations. *Bulraj Rai versus Pertaub Rai and others*, 17th March 1812, . . . . . II. 4

20. A mortgage and conditional sale by an agent set aside, it appearing that he had no special powers from the proprietor for that purpose; the consideration being inadequate, and the execution of the deed of sale irregular. But the mortgage money ordered to be returned with interest. *Goluknath Rai and another versus Mikray Banker*, 17th March 1812, . . . . . II. 6

21. For a consideration received, A engages to effect a release of lands mortgaged by him to B, and make over the same to C, or in default of his effecting the release of the lands in question, to make over other lands of an equal value: A fails in effecting the release; C claims other equivalent lands; or [in a supplementary plaint] to recover the consideration principal and interest of the sum advanced: decreed against A, but no lands; the engagement not being sufficiently specific to maintain a suit for land. *Maharaja Greeschund versus Bykunt Pal Chowdry and another*, 24th February 1813, . . . . . II. 48

22. Claim to set aside a mortgage and conditional sale rejected; the foundation of the plaintiff's claim being fraudulent, allegation of exaction of usurious interest not enquired into. [See 'Fraud,' No. 7.] *Raja Bishen Nath Rai versus Kurcemoola Chowdry and another*, 21st July 1813, . . . . . II. 71

23. Another case of claim to set aside a mortgage and conditional sale, dismissed on account of fraud. [See 'Fraud,' No. 10.] *Roopminder Deo Rai versus Roop Nurain Ghose and others*, 5th August 1814, . . . . . II. 118

24. A enters into a written engagement to B for the sale of his estate, on the condition of receiving the whole amount of the purchase money by a specified period, and in that case engages to execute a regular bill of sale. A receives part of the purchase money, and B tenders the remainder before the expiration of the specified period. A, however, refuses to abide by the terms of his agreement. At the suit of B, the conditional sale was held to be conclusive against A, although the engagement did not contain any express condition that it should be considered sufficient to constitute an actual sale. *Ram Govind Singh versus Baicha Ram Ghose*, 13th August 1814, . . . . . II. 123

25. A person having obtained a bill of sale of lands on the payment of 4,401 rupees, executes a written engagement, in which he agrees that he shall not be put in possession of the lands for the period of a year, four months and seventeen days; at the expiration of which the lands shall be re-sold to the seller, on condition of his paying the sum of 5,801 rupees; otherwise the engagement to be considered null and void, and the property to vest absolutely in the purchaser. Such transaction held in reality to be a *bye-bil-wafa*, or mortgage and conditional sale; and the condition for the re-sale being virtually a stipulation for interest beyond the legal rate,



the transaction held to be in violation of Regulation XV. 1793, and the interest liable to forfeiture. But the bill of sale and engagement having been publicly registered, the transaction held not to be an evasion of the above regulation, involving forfeiture of the principal. The purchaser's claim to the lands rejected, with a judgment in his favor for 4,401 rupees, the amount of his original advance. *Mahomed Jaun Chowdry versus Ram Ruttun Doss*, 29th April 1815, .. .. II. 146

26. In the action brought for possession of an estate, mortgaged under a deed of *bye-bil-wufa*, or conditional sale, the period of its redemption having expired, a decree was obtained in the zillah court. Two years after [the estate having in the mean time been sold by public auction] an appeal being preferred to the provincial court, the zillah decree, from its not being in conformity with the rules of Regulation XVII. 1806, was reversed. The *Sudder Dewanny Adawlut* however held the sale to have become absolute, considering the omission of the mortgager to prefer an appeal in due time, and to stay the intermediate sale of the estate, as a sufficient bar to his right of redemption. *Pudum Churn Mahapater and others versus Ram Lal Pandeh and others*, 19th November 1816, .. .. II. 200

27. A, [*a Mussulman*,] sues B for possession of a village under a deed of mortgage and conditional sale for 2,081 rupees, redeemable in five years. It appearing that A lent to B only 1,300 rupees; and to avoid the imputation of taking interest, consolidated the interest for that sum for five years with the principal, and caused the aggregate sum to be entered in the bond, as principal: adjudged that he is not entitled to the village, at the expiration of the period of redemption. The Court, however, ordered that he should recover the principal sum actually lent, with interest thereon, as there was no attempt to obtain interest beyond the legal rate. *Syud Khadim Ullee versus Duljeet Sing and another*, 16th March 1818, .. II. 255

28. A mortgager is entitled to recover possession summarily of an usufructuary mortgage, on payment of the principal sum borrowed; the question of interest being left open to future adjustment. *Kurta Rai and another versus Afzul Ali*, 8th January 1820, .. .. III. 3

29. A having lent 10,000 rupees on a mortgage of lands to B; and afterwards borrowed 5,000 rupees from C, on an agreement that C should have half the annual profits of the mortgage, and A having given to C, as security, the custody of the mortgage bond, executed by B, but retained the documents authorizing him to make the collection, held that this is a simple transaction between A and C, the former being accountable to the latter, without reference to the proceeds of the mortgaged estate. *Kishen Doss versus Dirghpal Singh*, 31st July 1820, .. .. III. 43

30. In a case of mortgage with conditional sale, the tender of the mortgage money borrowed, by a stranger to the transaction, is not sufficient to prevent a foreclosure. *Gopal Lal and others versus Raja Petumber Singh*, 28th November 1820, .. .. III. 54

31. In a sale of land, with stipulation for its being cancelled in the event of the purchase money being paid in nine years, accompanied at the same time with an undertaking on the part of the sellers that a portion of the property sold [which had previously been mortgaged] shall be redeemed within three months, or on failure thereof that the conditional sale shall immediately become absolute, held that such contract should not be enforced, it being unjust towards the seller, and contrary to the provisions of Regulation XVII. 1806. *Arman Pandeh and others versus Musst. Nouruttun Koonwur*, 20th February 1821, .. .. III. 78

32. The *Sudder Dewanny Adawlut* will uphold a decree of the Supreme Court, in favor of a mortgage, founded on a bond to confess judgment, although the foreclosure of mortgage be contrary to Regulation XVII. 1806,

the mortgager having voluntarily subjected himself to the jurisdiction. Zameerooddeen and another *versus* Rammohun Mullic, 19th September 1821, ... III. 111

33. Where the mortgage of an entire estate has been executed by several proprietors in one and the same transaction, an action by one proprietor for his own peculiar share will not lie. He may sue to redeem the whole, though the other sharers refrain from joining in the action; and, obtaining judgment, may take possession of the whole, leaving the other sharers to obtain their shares on preferring the requisite application, and on paying their full proportion of all the expenses. Sadhoo Lal and others *versus* Naema Beebee and another, 18th June 1822, ... III. 159

34. Judgment having been given against a mortgager, who sued to redeem the mortgaged property, on the plea that he had tendered repayment of the money borrowed; held that the mortgagee is not thereby entitled to foreclosure, without recourse to the rules prescribed by Regulation XVII. 1806. Bhuwany Suhai *versus* Uchruj Lal, 25th March 1823, ... III. 225

35. The conditional sellers of certain lands reinstated in possession, on payment of the purchase money, though the deed containing the condition could not be produced, and the absolute deed of sale only was forthcoming, and though two of the sellers admitted that it had been cancelled; it appearing that the provisions of Regulation XVII. 1806 had not been conformed to. Hedayut Ali and another *versus* Prem Singh, 29th July 1823, ... III. 250

36. The moles of the plaintiff having mortgaged their shares of an estate to two individuals; and, on those mortgagees absconding, having made a second mortgage to another individual, from whom the plaintiff redeemed the property, held that a private distribution among themselves by the first and second mortgagees cannot avail, as the first mortgagees had a right either to the whole, or no part of the mortgaged estate. Purtee Singh *versus* Bisumber Shahee and others, 29th January 1824, ... III. 298

37. The Court ordered a lease to be set aside, though it contained no mention of a term; it not being expressly declared to be perpetual and appearing to have been granted to the same person, on the same day, and for the same lands as a deed of mortgage, and thereby intended only as an additional security for a debt. Ram Nuran Mitter *versus* Kali Pershad Rai and others, 21st June 1824, ... III. 372

38. A makes an usufructuary mortgage of certain lands to B, and after alleging that the sum borrowed by him had been realized with interest from the profits, takes possession. B sues A for dispossession; and, while the suit is pending, sells his title to C, who, by a summary decision of the court, obtains possession of the disputed lands with mesne profits; held that a suit may be preferred at one and the same time by A against C, and the heirs of B [since dead] for redemption of the mortgage, mesne profits, and exemption from the summary award. Ram Nuran Mitter *versus* Kalee Doss Rai and others, 4th December 1824, ... III. 420

39. A case of redemption of mortgage under a deed of mortgage and conditional sale; the equity of redemption being saved by the payment of the money borrowed within the *period of one year from the receipt* by the mortgager of the notice to pay, issued under Regulation XVII. 1806, as expressly enjoined by the notice. Hussun Ali Khan and others *versus* Phool Bas Koor, 12th January 1825, ... IV. 5

40. Claim to redeem a village from mortgage. Plaintiff allowed to recover one half of the village by paying one half of the purchase money, that being the portion to which he was entitled by the law of inheritance, as heir of the original mortgager, with liberty also to sue to recover, by right of pre-emption, the other half which had been sold by the person entitled thereto

by inheritance to the mortgagee. *Mukhun Lal versus Wuzeer Ali*, 14th March 1825, . . . . . IV. 32

41. In a suit to obtain possession of certain premises under a deed of *bye-bil-wafa*, the mortgage having been foreclosed, and the sale made absolute; it appearing that one rupee per mensem was the sum stipulated to be paid as interest in the deed of mortgage, but that the mortgagee had received a separate bond engaging for the payment of one additional per cent. interest: such proceeding was held to be contrary to the provisions of Regulation XVII. 1806, and the claim was accordingly disallowed. *Luchmun Pooree versus Jowaher Geer*, 24th January 1826, . . . . . IV. 106

42. The validity of a transaction of *bye-bil-wafa* is not affected by the parties not having come to a final adjustment of their respective accounts, previously to the execution of the deed by the conditional seller. Neither is it affected [the term at the end of which the conditional sale was to become conclusive being five years] by the fact of excess above the legal interest having been received by the conditional purchaser in any one year, there being no trace of fraud to evade the law regarding interest. *Ram Koomar Neace Bachesputtee versus Bhugivuttee Dibia and others*, 31st January 1826, . . . . . IV. 111

43. Right of redemption adjudged to the seller of certain lands on the ground of a condition to that effect in a separate deed, though the bill of sale itself was not worded conditionally. *Beharee Lal versus Musst. Sookhun*, 10th July 1826, . . . . . IV. 174

44. Right to possession of certain villages under an *ikrarannah*, or written acknowledgment from the conditional purchaser, alleged to have been executed nine years after the sale had become absolute. Claim rejected; the agreement not being proved, or, though proved, being either without a consideration, or the condition violated by the plaintiff. *Gopal Lal versus Rajah Torul Nurain Singh*, 25th September 1826, . . . . . IV. 182

45. A lease granted in consideration of an advance of a sum of money, held to be equivalent to a mortgage; and the lessee declared liable for such surplus proceeds of the estate as remained after he had realized the principal and interest of his advance. *Mohunt Teekun Bhartee versus Syud Ihsan Ali and others*, 16th July 1827, . . . . . IV. 251

46. A borrowed 2,001 rupees from B, and granted him a farm of his estate in 1203 Pusee. B was to pay the revenue and account to A for  $\frac{2}{3}$ ds of the produce, and hold on until the principal was repaid. At the end of 1215, A sued to recover possession, on the ground that B had realized more than the principal and interest by profits, and that by Section 6, Regulation XV. 1793, a creditor is not entitled to interest more than amount of principal. B denied that he was liable to account for receipts, and claimed his right to hold the farm until the plaintiff should pay the principal. The Court held that the Section cited was not applicable to this case; but that as the profits of the farmer exceeded the legal interest, he should account annually for the excess of income realized, beyond the legal interest; and that A should recover his estate on repaying 826 rupees, the balance of principal appearing due on an account made up on the above principle. *Gholam Kadir versus Rai Neem Chunder Rai*, 24th April 1821, . . . . . V. Note. 9

47. If a mortgager in default, engage at the end of a term to convert the mortgage into a sale, in the event of non-redemption within the term, and if he neither satisfy the loan, nor surrender the property, the mortgagee may recover the loan with interest, and is not restricted to his real action. *Khedoo Lal Khatri versus Ruttun Khatri*, 2d February 1830, . . . . . V. Note. 12

48. In a conditional sale, after issue of notice to the vendor under Section 8, Regulation XVII. 1806, the vendee, within the year of grace, extend-

ed the right of redemption beyond that term. Held that such extension alone does not render a renewal of notice necessary under that law. *Pran Nath Rai versus Raja Govind Chunder Rai*, 14th June 1830, . . . V. 37

49. In a case of *bye-bil-wafa*, the lender having exacted illegal interest, by deduction from the principal, the Sudder Dewanny Adawlut, with reference to Section 9, Regulation XVII. 1806, dismissed the action for the land conditionally sold. *Bisumber Adé versus Kuleemooddeen and others*, 17th January 1831, . . . V. 81

50. Under Regulation XVII. 1806, the Court cannot summarily settle what payments shall entitle the vendor of a revocable sale to redeem; and in a case of improper interference, in this regard, [where the lower court had ruled that the deposit of the principal was sufficient,] the Sudder Dewanny Adawlut reversed the order, allowing the vendor, [thus misled,] a few days to save redemption by deposit of interest, the expiration of the year of grace notwithstanding. *Raja Burdakunt Rai versus Bunnalee Bose*, 19th April 1831, . . . V. 111

51. The vendee of a revocable sale takes out of court the amount of principal and interest tendered,—safe his right of action for the sum charged as short tendered,—and the Court will award the same, if the vendor fail to discharge himself, but without prejudice to his right to recover, of the vendee, the amount alleged to have been received by him. *Ibid.*, . . . V. 111

52. In consideration of, and to secure a sum paid by A, B deposited his titles to some real property, and executed a sale, revocable on re-payment of principal and interest within a limited period,—covenanting to give possession, and effect registry of the vendee's name. After nearly 12 years had elapsed, A sued B to recover the principal and interest, and the award in his favor was affirmed, the defence being a total denial of payment and deposit. *Kunhai Lal versus Nirmul Pooree*, 19th May 1831, . . . V. 117

53. If the revocability of a sale be denied by the vendee, the zillah court cannot interfere under Regulation I. 1798, in favor of the vendor. A, depositing the amount of the mortgage, moved the zillah court to restore possession. B pleaded that the sale was absolute. The zillah judge passed a summary order for restoration of the property to A; but this order was reversed by the Sudder Dewanny Adawlut, who ordered that the property should be restored to B on re-payment of the mortgage money with 12 per cent. interest, and that he should recover the collections during dispossession. On the institution however of a regular suit by C, who had purchased the estate of A, at a public sale for arrears of revenue against A and B, the revocability of the sale was established, and a decree for possession on redemption of the mortgage passed in favor of C. *Surup Chund Sicar versus Raja Greeschundra and others*, 15th August 1831, . . . V. 139

54. A sold to B certain villages which he had previously sold under *bye-bil-wafa* to C. On the suit of B against A and C, the lower courts decreed specific performance of the contract in favor of B, C receiving the money due on his conditional sale. The *fatwa* of the law officers of the Sudder Dewanny Adawlut asserted that, under the Mahomedan law, the vendee [B] of the pawner [A] could not recover an undeemed pledge from the non-assenting pawnee, [C], but might elect to wait redemption by the pawner, or sue him to set aside the sale. With reference to this opinion, and on general principles, the Sudder Dewanny Adawlut dismissed B's claim to compel performance. *Mahomed Muhr Khan and another versus Syud Ublood Hakim and others*. *Mahomed Mozuffier Chowdry and others versus Syud Ublood Hakim and others*, 14th August 1832, . . . V. 226

55. In 1795, a *surrai* on the lands of A, in the province of Benares, was made over to the raja, the zemindar, to reimburse the amount of a theft committed on a traveller levied from him. In his suit brought for this pur-

pose at the end of 33 years, A recovers possession under a decree of the Sudder Dewanny Adawlut,—the rule of limitation being barred by Clause 4, Section 3, Regulation II. 1805, and the presumption being that the raja had received more than his claim. *Birpal Doss versus Raja of Benares*, 19th September 1832, . . . . . V. 236

56. A sold to B by revocable sale several villages for a defined sum, and at the same time transferred absolutely to B other property, apparently but not really for money paid. On application of B, the zillah court ordered notice to redeem to be issued to A under Section 8, Regulation XVII. 1806. A paid off part of the price entered in the revocable deed of sale, and by mutual agreement part of the conditionally sold property was discharged and part remained under sale, revocable at a defined period on satisfaction of the share of the price imputed to it. A did not duly redeem, but made partial payment, received by B after expiration of defined period. B in his real action to recover as under a sale rendered absolute, failed on a special appeal to the Sudder Dewanny Adawlut, who did not order a refund of the purchase money; because *first*, the Court considered the gratuitous conveyance as an usurious device under Section 9, Regulation XV. 1793; *second*, proof was wanting that notice was duly served under Section 8, Regulation XVII. 1806; and, *third*, the original revocable sale was annulled by the subsequent covenant. *Parasnath Chowdhree versus Lala Behari Lal*, 28th February 1834, . . . . . V. 346

57. In an action to recover on a revocable sale as rendered absolute, the Sudder Dewanny Adawlut required proof that notice under Section 8, Regulation XVII. 1806 had been served on the vendor. *Ibid*, . . . V. 346

58. Mortgaged property was restored to the descendants of the mortgager after a lapse of 70 years from the date of the mortgage, on clear proof being adduced that no *bona fide* transfer had ever taken place. *Rai Iurnurain Singh and another versus Adul Singh*, 16th March 1835, . . VI. 24

59. A mortgagee having refused to receive from the zillah court the amount of a mortgage deposited there by the mortgager, who subsequently sold the property, held that the heir of the said mortgager having afterwards taken back the deposit did not affect the right of the purchaser. *Mohunt Omrao Bhartee versus Hummut Singh*, 3d June 1835, . . VI. 28

60. In this case the property of the debtor having been given merely as a pledge or security for a debt, the debt itself being payable on a specified date without further condition respecting the property, the suit was rightly brought for the recovery of the sum lent without interest. Had the transaction been of the nature of a conditional sale, the money action would have been barred by Construction No. 898. *Beijnath Ghuttue versus Fukeer Chund*, 19th September 1836, . . . . . VI. Note. 110

61. Held that the mere deposit by the borrower of title deeds of real property, as security for a debt, is equivalent to a mortgage, in giving the holder of the deeds a prior lien on the property specified therein. *Laljee Gomasheteh versus Govind Ram Jance*, 23d May 1837, . . VI. 165

62. The period of one year allowed for the redemption of mortgages on conditional sales by Section 8, Regulation XVII. 1806, must be calculated from the date of the issue of the written notification, which should also be the date of the notification itself. Held by the Sudder Dewanny Adawlut that a notice bearing the date of the order for issue, instead of the date of actual issue, was incorrectly and irregularly dated; and that the period included between those two dates could not be calculated as coming within the year allowed to the mortgager to redeem the mortgage. *Ram Gopal Sirma Turufdar versus Ramzan Bebee and others*, 19th June 1837, . . VI. 166

63. In a transaction partaking of the nature of a simple mortgage, in which the mortgagee was not in possession of the property mortgaged, it was

held that the mortgagee must bring his action, for foreclosure of the mortgage, within 12 years from the date of the expiration of the year of grace allowed to the mortgager for redemption. *Felix Lopes and another versus Chowdree Bheem Singh*, 11th September 1841, .. .. VII. 45

64. Action by a mortgagee to recover principal and interest decreed in his favor, on proof of failure on the part of the mortgager to fulfil the condition mutually agreed upon, of transferring the mortgaged property to the occupancy of the mortgagee. *Rajah Gopal Surn Singh versus Martindell*, 27th September 1841, .. .. VII. 47

65. In a case of mortgage executed by the several proprietors of a village, without specification of shares, who jointly received the loan and bound themselves to repay it at one payment, it was held that one of the proprietors could not redeem his own particular share on depositing his alleged portion of the share. *Syud Urshud Allee Khan versus Syud Imjad Allee*, 25th November 1841, .. .. VII. 53

66. The year of grace for redemption of mortgage must be reckoned as laid down by law, which no local custom can supersede. *Rutun Monee and others versus Joogul Kishore Raee and others*, 19th June 1847, .. VII. 346

67. In a suit by the purchaser for possession of mortgaged property situated in the *mofussil*, sold publicly by the mortgagee after obtaining judgment in the Supreme Court on the mortgage bond, the claim was dismissed as founded upon a transaction opposed to the *mofussil* law of mortgage. *Bhuwannee Churn Mitr versus Jykishen Mitr and others*, 24th July 1847, .. .. VII. 362

68. In a suit between a purchaser and prior mortgagee, it was held that it was not necessary for the latter to issue his notice of foreclosure on the former, though in possession of the land, as the law (Section 8, Regulation XVII. 1806) restricted its service on the mortgager, or his legal representative, and purchaser being neither. *Jeysunker Chund and another versus Zumeeroodeen Mohummud Rezza and others*, 1st September 1847, VII. 390

69. A mortgager, or conditional vender, is entitled to have an account from the mortgagee, or conditional vendee, for the period of his possession, before it can be ruled that his equity of redemption is barred. *Baboo Hurpurshad Nurain Singh versus Lalpareh*, 13th April 1848, .. VII. 485

70. A mortgagee may transfer his rights and interests in a mortgage held by him upon real property. *Sheikh Mokim Sircar versus Turee Bibi and others*, 14th June 1848, .. .. VII.

71. A party denying a mortgage, although depositing in court the sum required for its redemption, with the expressed intention of suing for its recovery, cannot, on the mortgage being established, claim to have the deposit considered as a legal tender. *Hurkishore Raee and others versus Ojeer Ali and others*, 31st December 1848, .. .. VII.

See 'Practice,' Nos. 77, 82, 91, 93, 104, 112.

'Agent,' Nos. 9, 12.

'Appeal,' Nos. 9, 20.

## MOSHAIIRA.

See 'Annuity,' No. 1.

'Alienation,' No. 3, Part II. Hindu Law.

## MOTHER.

See 'Mother,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

## MOUJJUL.

See 'Moujjul,' Part III. Mahomedan Law.

## MOUROOSY IJAREH.

See '*Talooks*,' Nos. 3, 4.

## MOWUJJUL.

See '*Mowujjul*,' Part III. Mahomedan Law.

## MUDDUD MASH.

See '*Muddud Mash*,' Part III. Mahomedan Law.

## MUTTAN.

1. *Muttan* is a portion of land allotted by a zemindar as a remuneration for bringing waste lands into cultivation. Ram Kaunt Dutt and another *versus* Gholam Nubbee Chowdry, 10th May 1813, .. II. Note.

## MUZKOOREE TALOOK.

See '*Talook*,' No. 11.

## NAGUR BRAMINS.

See '*Nagur Bramins*,' Part II. Hindu Law.

## NATIVE OFFICERS.

## DEFAULTING STAMP DAROGHA.

See '*Security*,' No. 5.

## DEFAULTING STAMP MOHURRIR.

See '*Security*,' No. 2.

## DEFAULTING TREASURER.

See '*Security*,' Nos. 6, 8, 9.

## DEWAN OF COLLECTOR, LEASE GRANTED TO.

See '*Lease*,' No. 15.

## DEWAN OF COLLECTOR LENDING MONEY.

See '*Bonds*,' No. 1.

## DEWAN OF COMMERCIAL FACTORY.

See '*Dewan*,' *passim*.

## EXACTIONS BY A TUHSEELDAR.

See '*Fine*,' No. 4.

## KAZEE AND SUDDER AMEEN MAY ARBITRATE.

See '*Arbitration*,' No. 7.

## MONEY LENT BY A JUDGE TO A NATIVE OFFICER.

See '*Bonds*,' No. 2.

NATIVE OFFICER OF A FORMER GOVERNMENT.

See 'Auction Sales,' No. 4.

TUHSEELDAR PURCHASING LAND AT PUBLIC AUCTION.

See 'Auction Sales,' No. 17.

NEGOTIATION.

See 'Bill of Exchange,' No. 5.

NEPIHEW.

See 'Nephew,' Part III. Mahomedan Law.

NEW SUIT.

See 'Practice,' Nos. 5, 21, 42.

NEW TRIAL.

See 'Practice,' No. 24.

NONSUIT OR DISMISSAL ON DEFAULT.

1. A suit having been received by one judge of a provincial court, it is not competent to another judge to dismiss it on the ground of the cause of action not being such as to render it cognizable by that court; nor is this a just ground in any case for dismissing a suit after the merits have been gone into. *Nub Kishore Bunhoojea versus Hyder Buksh*, 30th August 1814, .. .. II. 125

2. Held, that the institution of a suit for the recovery of a debt before the time specified for payment, is not a sufficient ground for depriving the creditor of interest after the debt had become due; though sufficient for refusal of costs or nonsuit. *Mohunt Runjeet Gir versus Kunhya Lal and others*, 12th February 1821, .. .. III. 68

3. Plaintiff having sued for possession of certain lands under a farming lease granted to his servant was nonsuited. *Tara Soondree Chowdrain versus Loknath Moitre*, 6th April 1848, .. .. VII. 481

See 'Appeals,' Nos. 3, 5, 7, 8, 14, 16, 19.

NOTICE.

See 'Appeals,' Nos. 7, 8.

'Auction Sales,' Nos. 12, 16, 19.

'Practice,' No. 58.

NYUMPUTR.

See 'Nyumputr,' Part II. Hindu Law.

OATH.

See 'Practice,' No. 68, 121.

OBSEQUIES.

See 'Obsequies,' Part II. Hindu Law.



## PACHETTE. •

- See 'Usage,' No. 3.  
 'Usage,' No. 10, Part II. Hindu Law.

## PARENTAGE.

- See 'Parentage,' Part III. Mahomedan Law.

## PARTITION.

- See 'Settlement,' No. 5.  
 'Partition,' Part III. Hindu Law.

## PARTNERSHIP AND PARTNERS.

- See 'Action,' No. 11.  
 'Banking House,' Nos. 2, 3, 8.  
 'Pre-emption,' No. 2, Part II. Hindu Law.  
 „ Nos. 2, 4, Part III. Mahomedan Law.

## PATERNAL UNCLE'S SON.

- See 'Paternal Uncle's Son,' Part II. Hindu Law.

## PATERNAL UNCLE'S GRANDSON.

- See 'Paternal Uncle's Grandson,' Part II. Hindu Law.

## PATRIMONIAL PROPERTY.

- See 'Patrimonial Property,' Part II. Hindu Law.

## PAUNER-BHAVA.

- See '*Pauner-bhava*,' Part II. Hindu Law.

## PAUPER.

1. A decree passed by the lower court in favor of a pauper plaintiff, reversed by the Sudder Dewany Adawlut on discovery of property sufficient to nullify the fact of *pauperism*, *quoad* the suit, in possession of the pauper plaintiff at the time of institution of the suit. Syud Sujait Ali *versus* Musst. Torab-o-nissa and others, 7th September 1846, .. .. VII. 279

- See 'Appeals,' Nos. 18, 21, 25.

## PEEROOTER.

- See '*Peerooter*,' Part III. Mahomedan Law.

## PENALTY.

- See 'Contracts,' Nos. 3, 4.  
 'Damages,' Nos. 1, 2.

## PENANCE.

- See 'Penance,' Part II. Hindu Law.

## PENSION.

1. Claim to lands granted in commutation of a yearly pension, under *sunnu*s executed subsequently to the acquisition of the *Dewanny*, dismissed by the provincial court; but it appearing that the pension, in lieu of which the grant was made, had been granted before the Company's accession to the *Dewanny*, the claimant was referred by that court to the collector, who rejected his claim under the provisions of Section 3, Regulation XXIV. 1793. On appeal to the Sudder Dewanny Adawlut, the Court affirmed the decision against the claimant. *Ram Jewun Misser versus Gouree Singh*, 6th September 1813, .. .. . II. 83

See 'Annuity,' No. 5.  
'Rent-free Tenures,' No. 16.

## PERGUNNAH RATES.

See 'Arrears,' Nos. 2, 4.  
'Assessment,' Nos. 12, 25.  
'Lease,' No. 3.  
'Talook,' Nos. 4, 12, 16.

## PILGRIMS.

See 'Pilgrims,' Part II. Hindu Law.

## PLEA.

See 'Practice,' Nos. 1, 3, 7, 34, 59.  
'Rent-free Tenures,' No. 30.  
'Alienation,' No. 34, Part II. Hindu Law.

## PLEADER'S FEES.

See 'Costs,' No. 5.

## PLEDGES.

See 'Mortgage,' No. 8.

## PORTUGUESE LAW.

See 'Escheats,' *passim*.

## POSSESSION.

See 'Actions,' Nos. 3, 5, 16.  
'Advocate General,' No. 2.  
'Appeals,' No. 6.  
'Ejectment,' *passim*.  
'Limitation,' Nos. 2, 4, 5, 6, 9, 12, 15, 16, 17, 24, 26, 29, 30, 39.  
'Mortgage,' Nos. 28, 53.  
'Ancestral Property,' Nos. 2, 4, 5, 9, 13, Part II. Hindu Law.  
'Engagements,' No. 1, Part II. Hindu Law.  
'Gifts,' Nos. 4, 5, 9, Part II. Hindu Law.  
'Gifts,' Nos. 1, 3, 5, 7, 8, 14, 18, 19, Part III. Mahomedan Law.

## POSTPONEMENT.

See 'Auction Sales,' No. 16.

## POTTAHS.

1. The notice prescribed in Section 5, Regulation IV. 1794, refers to the tender of *ryatlee* and not of *talookdaree pottahs*. Nuboo Coomar Chowdhree and others *versus* Hur Chunder Nath and others, 17th July 1847, VII. 361

## PRACTICE.

1. A plea adduced in the Sudder Dewanny Adawlut, no mention having been made in any former stage of the cause of the circumstances which it recited, and no reason assigned why, if true, they had not been stated, was rejected as false on the face of it. Mahoda *versus* Kulcani and others, 14th March 1803, . . . . . I. 63

2. A decree having been passed for lands, is afterwards amended; the parties having represented the lands [not in possession of either of them] to be held by other persons in mortgage, whereas the alleged mortgagees, when called upon, state themselves to hold as proprietors, paying a fixed *jumma*. The Sudder Dewanny Adawlut therefore adjudge a share of the *jumma* receivable, and not of the land, leaving the claimant, who objects to the asserted tenure of the possessors, to sue for them if he think fit. Beebee Jugun *versus* Baker Ali and others, 7th May 1804, . . . . . I. 78

3. The Sudder Dewanny Adawlut will not receive in evidence a document dishonestly suppressed by a party in a suit, and directly contradicting the plea on which his original defence rested. Sufder Hosein *versus* Enayet Hosein and others, 25th November 1805, . . . . . I. Note. 112

4. In a suit concerning rent, the Court of Sudder Dewanny Adawlut do not consider it regular to order a separation of the lands of the parties on proof of independant proprietary right. Birj Kishwor and others *versus* Sumbhoo Chund Rai, 13th June 1806, . . . . . I. 112

5. A new suit may be admitted to supply an evident defect in a former decree, with respect to interest on the amount adjudged. Jugul Kishwor and others *versus* Radha Kunt Ghose, 18th August 1806, . . . . . I. Note. 151

6. The Court of Sudder Dewanny Adawlut will receive fresh evidence in appeal, on clear and unquestionable proof that it could not be discovered until after the decree of the provincial court. Nubkishen Sem *versus* Kishen Mohun Sem, 1st September 1806, . . . . . I. 159

7. A plaintiff is at liberty to amend the original claim before it has been investigated. Sri Nuram Rai and another *versus* Bhya Jha, 27th July 1812, . . . . . II. 30

8. Three respondents claiming a right to succeed to certain lands, were all permitted to defend the appeal against a fourth party, but were referred to a regular suit for the purpose of establishing their individual right of succession. Juggut Chunder Sem and another *versus* Kishwanund and others, 12th September 1814, . . . . . II. 126

9. In a suit brought by one person against another, to recover certain lands under a deed of gift alleged to have been executed in his favor by the proprietor, it is only necessary to enquire into the title of the claimant; and should it incidentally appear that neither party has a right to the property, still the rightful heirs must institute a regular suit in order to recover it. Raja Chutter Singh *versus* Shah Mahomed Ali, 5th April 1816, . . . . . II. 178

10. The same principle governed the decision of the case of Government and others *versus* Banesur Nag and others, 30th December 1816, II, 219

11. In a suit between two individuals, judgment in favor of one of the parties held not to bar the claim of Government, not a party to the suit, to the lands affected by that judgment. *Joanna Fernandez versus Domingo DeSilva* and another, 12th February 1817, .. .. II. 227
12. The Court of Sudder Dewanny Adawlut decreed to a sharer possession of her share under the provisions of Section 13, Regulation III. 1793, though she was not an original plaintiff in the suit. *Kalee Pershad Roy and others versus Degumber Roy*, 28th May 1817, .. .. II. 237
13. In a suit brought by a Mussulman against a Hindu, the decision was grounded on the law of the religion of the defendant, as directed by Section 3, Regulation VIII. 1795. *Musst. Rubbee Koor versus Jewut Ram*, 1st April 1818, .. .. II. 257
14. Pending an appeal from a decision obtained in the provincial court by Messrs. Palmer and Co., as attorneys for Mr. Morgan, senior, that gentleman died; but the Court allowed Messrs. Palmer and Co. to defend the appeal under a general power of attorney executed by the son and next heir of the deceased. *Ooduy Churn Chatoorjea versus Messrs. Palmer and Co.*, 14th February 1820, .. .. III. 11
15. On the dismissal of a claim by a Mahomedan female against her father-in-law for certain property, real and personal, it is competent to the Court to award her a monthly allowance, payable by the defendant; no such claim having been preferred by her. *Meer Abdool Kureem versus Fakhur-o-nissa Begum*, 2d August 1820, .. .. III. 44
16. Held that the institution of a suit for the recovery of a debt before the time specified for payment, is not a sufficient ground for depriving the creditor of interest after the debt has become due; though sufficient for refusal of costs or for nonsuit. *Mohunt Runjeet Geer versus Kunhyalal and others*, 12th February 1821, .. .. III. 68
17. The decrees of a court below in favor of a Hindu widow for possession of her husband's estate, amended on the ground of their not having specified the nature of her interest, and the mode in which the property should be disposed of at her death. *Poklmairan and others versus Musst. Seesphool*, 5th November 1821, .. .. III. 114
18. In a case of review of judgment, two judges being of opinion that the decree reviewed should be reversed, and two that it should be affirmed,—one of the latter having joined in passing the decree reviewed, and the judge who concurred with him in that decision having since died; held that the opinion of the deceased judge should be taken into the account, so as to create a majority, without the necessity of calling in a fifth judge. *Baboo Sheo Doss Nuram versus Kunwal Bas Koonwur and others*, 5th July 1823, .. .. III. 231
19. Judgment of the Sudder Dewanny Adawlut declared conclusive against two interlocutory claimants, their claim, virtually rejected by the zillah decree, not having been brought forward on appeal to the provincial court, nor supported by a separate action. *Sona Ram Surma versus Ram Ruttam Surma and others*, 4th September 1823, .. .. III. 266
20. One judge of the provincial court being of opinion that the zillah decree should be reversed, a second that it should be affirmed, with leave, however, to the defendant to bring a fresh action: it is not competent to a third judge to dispose of the case finally by affirming the zillah judgment, if he differ as to latter part of the order. *Suleemoolla and others versus Doorpudee Dossce*, 9th March 1824, .. .. III. 319
21. A suit founded on a claim of inheritance having been dismissed, it is not competent to the courts to entertain another action by the same individual on the same grounds, though the persons sued, and the amount claimed be different. *Seam Begum and others versus Ghaleb Jung Khan and others*, 13th April 1824, .. .. III. 335

22. In a claim to mesne profits, the zillah judge having awarded the profits claimed *without* interest, it is not competent to a single judge of the provincial court on appeal to award interest on the profits. *Beer Pershad Chowdry versus Raj Nurain Doss*, 26th April 1824, . . . . . III. 343
23. The appellant having entered into an agreement with a person to give him up one half of the estate claimed by him, if a decree should be passed in his favor, on consideration of that person's advancing the money required for the costs of suit; the Sudder Dewanny Adawlut held the transaction to be illegal, and ordered the agreement to be cancelled before they would admit the appeal. *Ram Gholam Singh versus Keerut Singh and others*, 19th January 1825, . . . . . IV. 12
24. The decree of the court below being reversed by the Sudder Dewanny Adawlut, owing to the proceedings in the zillah court not having been conducted agreeably to the Regulations, it was ordered that the suit should be tried *de novo* on the original stamp fees. *Raja Armurdun Sahee versus Sheo Dyal Opudhah*, 10th July 1826, . . . . . IV. 173
25. Previous to Regulation IX. 1831, the Sudder Dewanny Adawlut held that, under special circumstances, [dissent from the *bewusteh* on which the decree of the lower court rested,] an appeal should be submitted to a second judge; although the single judge so dissenting, concurred on other grounds in the judgment actually passed. *Koul Nath Sing versus Jagrup Sing and others*, 20th February 1830, . . . . . V. 15
26. Where part of a claim is awarded in judgment, possession of the residue cannot be given in execution of the decree, although it should immediately devolve on the claimant by a clear title. *Rai Sham Bulabh versus Pran Kishen Ghose*, 29th March 1830, . . . . . V. 21
27. If a claim be dismissed by way of nonsuit, the Court should not narrow the future legal recourse of the plaintiff. *Krishen Dutt Sahoo versus Krishn Purshad and others*, 15th July 1830, . . . . . V. 39
28. Where the judgment of a lower court is expressly affirmed in appeal, any inconsistent words, subjoined to the decretal order of the appellate court, should be treated as surplusage,—benefiting and prejudicing neither party. *Durm Nurain Ghose and another versus Ladh Mohun Thakoor and another*, 30th August 1830, . . . . . V. 62
29. Plaintiff alleged ejectment by defendant, by and under color of an act of the collector, whom he did not make a party to the suit. For such omission, and for particulars of claim deficiently set forth in the plaint, judgment of nonsuit is substituted by the Sudder Dewanny Adawlut in place of an award in favor of the plaintiff, passed by the lower court, apparently rather on the ground of defect of proof of the defendant's right, than on the merits of the plaintiff's claim. *Meer Ah versus Rajhul Ram Ray*, 18th November 1830, . . . . . V. 72
30. Two judges of the Sudder Dewanny Adawlut concur in amending the decree of the provincial court, but differ as to the grounds; final judgment passed notwithstanding. *Baboo Ram Suhai Singh and others versus Chundun Singh and another*, 5th March 1831, . . . . . V. 96
31. A sues B for certain properties, under an universal title, [inheritance for instance,] and B repels his claim by pleading a particular title, [specific gift for instance.] If B's title fail, the court cannot award to A any property not claimed, his obvious right notwithstanding. *Ibrahim Khan versus Syud Mahomed Arab and another*, 19th September 1831, . . . . . V. 143
32. The Sudder Dewanny Adawlut had confirmed the decision of the provincial court, which dismissed a claim as barred by prescription; but afterwards, on review, held that valid exception existed, and directed that the suit revived should be tried on its merits. Held that the lower court and the Sudder Dewanny Adawlut in appeal, cannot again go into the question of prescription; nor try any alleged fraud and imposition, by which,

- on review, the order for the revival of the case had been obtained. *Roop Chund Sahoo and another versus Jewun Lal Ray and others*, 31st January 1832, .. .. . V. 168
33. When a real claim of plaintiff is dismissed, the court will provide for an equity to which he is entitled; for instance will award [with interest] against the estate of his vendor principal sum paid by plaintiff for lands which plaintiff's vendor could not legally alienate. *Ram Soonder Roy versus Heirs of Raja Udwunt Singh*, 30th May 1832, .. .. . V. 211
34. On hearing pleadings, if it appear that plaintiff has omitted any party who may be found liable to the claim, the Court may direct the plaintiff to include such party by supplemental bill. *Raghoo Nath Bose versus Salt Agent of Chittagong*, 10th December 1832, .. .. . V. 212
35. Where an *amcen* had not been sworn previous to deputation, under Section 17, Regulation IV. 1793, but had been subsequently sworn to his report, two judges admitted a special appeal from the doubt, but one judge judicially determined that the defect was cured. *Shah Newaz Khan versus Dr. Clement*, 10th January 1833, .. .. . V. 261
36. Where the lower court had decreed part of demand, on a title distinct from that on which it was preferred, it was held that it was not competent to the lower court to enquire into such title and make any decree thereon, safe, however, the plaintiff's right to bring a new action on that title. *Mahomed Yakoob versus Wajid-o-missa*, 28th January 1833, .. .. . V. 262
37. Where there was several defendants in a suit which was dismissed in the lower court, the Court, in appeal, allowed the plaintiff (appellant,) to discharge those not considered by him liable, and to prosecute the appeal against the principal defendant only. *Karta Doss Mohunt versus Lekraj and others*, 5th February 1833, .. .. . V. 266
38. Where the original notice of appeal had been mislaid, the Sudder Dewanny Adawlut directed renewal, and the respondent was allowed to appear and defend after proceedings had in the appeal *ex parte*, *Ibid.* .. V. 266
39. Where two judges of the Sudder Dewanny Adawlut concurred in a judgment as to the demand of the plaintiff, but differed as to a question of law which was incidentally raised, reference was made to a third judge. *Prasanno Nath Rai versus Kance Krishen Muneo*, 12th March 1833, .. V. 274
40. A sued for an estate by right of inheritance: B repelled the suit by pleading defect of right in A, and judgment in a prior cause, between himself and C, the adoptive mother of A, founded on a compromise which he alleged C was competent to make. The Sudder Dewanny Adawlut finding strong presumption of A's right, quashed the judgment on the first claim, to which A ought to have been made a party and execution of which he opposed; decreed recovery to A, with permission to B to bring a new suit against A and C, jointly, to establish the legality of his alleged title under the compromise. *Maharaja Govind Nath Roy versus Gulal Chund and others*, 23d March 1833, .. .. . V. 276
41. In a case of succession, A and B, as joint heirs, claimed and obtained a share [ $\frac{1}{4}$ ] of an estate. In appeal of the defendants, the Sudder Dewanny Adawlut awarded to A solely a share, to which he was legally entitled, [ $\frac{1}{3}$ ] exceeding that decreed to him and B jointly by the lower court. Complement of stamp duty not exacted. *Laxmi Nuran Singh and another versus Tulsee Nuran Singh and others*, 9th April 1833, .. .. . V. 282
42. The lower court did not try part of the claim of A against B, because it was repelled by the result of the suit of C against B, resting on fact, safe A's right to sue *de novo*, according as the appeal court might decide in the other suit which was appealed. The Sudder Dewanny Adawlut [one judge sitting] affirmed this decision. *Hedayut Ali Khan and another versus Tajan and others*, 4th April 1833, .. .. . V. 287

43. Judgment of the lower court reversed in the Sudder Dewanny Adawlut by two judges not on identical grounds. *Rai Radha Gobind Singh versus Gorachund Gosayn*, 15th April 1833, .. .. V. 290

44. Where the right of inheritance was the subject of a suit, and the question as to the validity of a contract under the Mahomedan law incidentally arose, the Sudder Dewanny Adawlut ascertained such law by reference to its *nuffis*. *Imdad Ali versus Kadir Buksh and others*, 24th April 1833, V. 296

45. A judgment creditor had intervened in a case in which his debtor was defendant, to assert the right of the latter, and the liability of the contested property to satisfy his claim; his interest was held to entitle him to prefer an appeal from the judgment of the lower courts, which diminished the solvency of his debtor. *Ibid*, .. .. V. 296

46. Where the plaintiff, a *Mussulman*, claimed against a *Hindu* vendor and vendees of an aliquot part of an estate, the right of pre-emption founded on common tenancy, it was ruled by the Sudder Dewanny Adawlut, on general principles of equity, that the case should be tried with reference to the law of the defendants rather than that of the plaintiff. *Sukeena Khattoon versus Gouri Shunker Sein and others*, 9th July 1833, .. V. 299

47. A having failed in his action against B, appealed: the judgment creditors of B, interested in his solvency, were allowed to defend the appeal. *Aiman Beebec versus Ibrahim Khan*, 9th May 1833, .. V. 304

48. Where the Sudder Dewanny Adawlut decreed a right, deeming such limitation equitable under the circumstances, it restricted its retro-active effect; so that title to mesne profits, subject to the payment of interest resulting from such right, was barred. *Rajinder Nurain Adhekari and another versus Syud Abdul Hakim and others*, 19th July 1833, .. V. 307

49. Judgment of nonsuit passed with reference to the Regulations generally and the Circular Order of the Sudder Dewanny Adawlut, dated 29th July 1809, because the action was brought on part of a *furzee*. *Omdut-omssa and another versus Sheikh Umadoodeen*, 22d July 1833, .. V. 313

50. When the fact of fraud constituting a bar to limitation under Regulation II. 1805, had been alleged and was clear, the Sudder Dewanny Adawlut on appeal did not deem it necessary to direct formal investigation omitted by the lower court, and adjudicated on the incident under Section 3. *Pran Kishen Neogee and another versus Sudderoodeen Chowdry and others*, 9th September 1833, .. V. 323

51. A single judge of the Sudder Dewanny Adawlut found part of the disposition of a judgment of the lower court untenable, and concurred in the rest. On assent of the party benefiting by such untenable part to forego its benefit, final judgment, essentially judgment of amendment is passed. *Pannath Chowdry versus Chunder Munc Diver*, 25th September 1833, .. V. 328

52. Two judges of the Sudder Dewanny Adawlut admitted a special appeal, because the lower courts had decided the case, in which a question of Hindu law was involved, without reference to the law officer. The judges, who heard the case in appeal, differing from the facts found in the lower courts, adjudged the case [without reference to their law officer] on usage and Hindu law applicable to facts found by them. *Kirpa Sundhu Patjoshi and others versus Kanhaya Acharya and others*, 31st December 1833, V. 335

53. A by receding from an award made by arbitrators on his contest with B, to which both at first had assented, compelled B to sue him for his legal claim. A defended, and B was nonsuited for some informality by the lower courts, and instead of appealing sued *de novo*. The second suit is tried on special appeal by the Sudder Dewanny Adawlut, who decreed the right of B to be according to the award as to part, and more than the award as to part. *Ibid*, .. .. V. 335

54. The Sudder Dewanny Adawlut dissenting from the principle on which a final decree of the lower court was passed, construes strictly its terms. Sukhawat Hosein *versus* Trilok Singh and others, 13th January 1834, .. .. . V. 338

55. Where a case was remanded on appeal to the lower court, the Sudder Dewanny Adawlut refunded the whole of the institution fee, and limited the remuneration of the *wukeel* to one-half. Nityanund Upadhyay *versus* Lokraman Upadhyay and others, 22d February 1834, .. .. . V. 342

56. The zillah court, on plaintiff's suit, adjudged a conditional sale made by defendant to be absolute. The appeal was heard by two judges of the provincial court in succession: the last adopted the judgment of reversal proposed by the former on the ground of redemption by the vendor: but the first judge by order on petition of the respondent had retracted the verdict, whence the case was sent back to him, and he now reverted to his first verdict and passed judgment in conformity. Again moved by the vendee, by an order on his petition he directed an application to the Sudder Dewanny Adawlut for review, because vendor had not redeemed and no provision had been made for the balance due, and he staid execution. This order had not been sent to the other judge for concurrence, when the provincial court was abolished under Regulation II. of 1833. On application to the Sudder Dewanny Adawlut by original defendant for a special appeal, review of judgment was admitted by a single judge [who had consulted his colleagues] under Section 5 of that Regulation. Hens of Roopchand Paramanic and another *versus* Bagwut and another, 12th March 1834, .. .. . V. 352

57. Under Clause 6, Section 2, Regulation IX. 1831, a judge of the Sudder Dewanny Adawlut, confirming a decision of the lower court, may, previously to signing his judgment, provide for the submission of the case to another judge. Wasik Ali Khan *versus* Government, 29th November 1834, .. .. . V. 369

58. A and B file a suit in the zillah court against C and D, for the recovery of certain outstanding balances, which is dismissed with costs. On appeal to the provincial court, C acknowledges and liquidates his share of the balance sued; but the provincial court confirms the decree of the zillah court, holding that the acknowledgment given by C cannot be looked on as a proof of liability on the part of D. On special appeal by A and B, the Sudder Dewanny Adawlut affirms the decrees already passed. Lala Gopal Nurain and another *versus* Ajooba Singh, 11th August 1835, .. .. . VI. 38

59. Defendant's objections to the valuation of property should be urged in the court of first resort, and cannot be urged as a matter of right in the court of appeal. Sheikh Acber Ali and another *versus* Surrujeh Singh and others, 25th May 1836, .. .. . VI. 68

60. The zillah court having under the Hindu law, which bars the right of a widow to alienate ancestral property, dismissed a claim preferred on the ground of a deed of sale executed to the plaintiff by a female, the Sudder Dewanny Adawlut reversed the decree, it appearing that the defendants had not pleaded as a bar to the claim the rule of law which governed the judgment of the lower court,—that there was nothing in the proceedings to shew that the property was ancestral,—and that the defendants, both in the proceedings in court and in private transactions, had omitted the fact of the sale, without offering any objections to the same. Omrow Singh *versus* Hem Koonwur and others, 29th August 1836, .. VI. 105

61. Two judges of the Sudder Dewanny Adawlut arrive at the same general conclusion in regard to a judgment in a case; but differing on a material point with special reference to which the first judge had sent the case for another voice, the Sudder Dewanny Adawlut held that the deci-



sion was incomplete, and that the case must be submitted to another judge. *Wasiq Ali Khan versus Government*, 22d September 1836, . . . VI. 100

62. The Sudder Dewanny Adawlut dismissed a claim for refund of the purchase money paid by the plaintiffs for certain lands which had been sold by the collector in execution of a decree of court, but which formed part of a joint estate, subsequently (and before possession had been given to the plaintiffs) sold for arrears of revenue. *Government versus Ram Lochun* and another, 24th April 1837, . . . VI. 157

63. The revenue authorities, in giving effect to the orders of court, cannot be held liable for the errors or irregularities of the latter. *Ibid*, . . VI. 157

64. A brings an action against B : C intervenes : judgment is given in the zillah court in favor of A : B and C appeal on entirely different issues. One judge is for amending the case on the appeal of B, and reversing the zillah decree as far as it affects C. Another judge is for partly confirming the zillah decree on the appeal of B, and for partly reversing on the appeal of C. Notwithstanding the concurrence of voices in regard to the appeal of C, both appeals are sent on for another voice. Two judges then concurring pass final judgment, reversing the zillah decree on both appeals. *Umrut Jan Beebee versus Shub Jan Beebee* and others. *Ram Kaunt Deb versus Umrut Jan Beebee*, 11th September 1837, . . . VI. 181

65. A petition by the plaintiff, withdrawing his claim, having been rejected by the zillah judge, held by the Sudder Dewanny Adawlut that as such withdrawal could not affect the rights of other parties, it ought not to have been rejected. *Ibid*, . . . VI. 181

66. Pending an appeal to the Sudder Dewanny Adawlut, in a case in which the claim was founded on peculiar family usage, the claimant died, and a party stating himself to have the next best title to the property applied for permission to carry on the appeal. Application refused ; and the appellant referred to a separate action, as no decree could be passed in his favor on the plaint of the party, who originally claimed under the special usage. *Lall Munce Koonwaree and others versus Raja Nemye Nurain* and another, 16th April 1839, . . . VI. 355

67. In a suit for land and mesne profits, the zillah court gave a decree in favor of the plaintiffs for a fractional portion of the land, leaving the quantity as well as the amount of mesne profits to future adjustment in the course of execution of the decree. Held that the decree was incomplete, and re-investigation ordered. *Sheeb Chunder Roy and another versus Hur Mohun Roy* and others, 2d December 1840, . . . VI. 305

68. The mode of deciding by the oath of the plaintiff, can only be resorted to with the consent of both parties to the suit. *Jaga Doss versus Hem Nurain Singh* and others, 2d December 1840, . . . VI. 305

69. It is irregular to award mesne profits in general terms, and without specification of period for which they are recoverable. *Ram Koomar Chukerbutty and others versus Ram Ram Bhuttacharj* and others, 3d December 1840, . . . VI. 306

70. A claim to mesne profits of certain lands, which had been adjudged to the plaintiffs under a decree founded on an arbitration award, preferred nearly 12 years after the date of the decree, dismissed on the presumption that the arbitrators had adjusted all differences between the parties respecting the disputed lands. *Rajah Rughoonundun Singh and another versus Must. Noorut Pauree* and others, 19th January 1841, . . . VII. 3

71. The defendants in an action having advanced a plea which, if correct, would have barred the jurisdiction of the court trying the suit, but which that court neglected enquiring into, the Sudder Dewanny Adawlut returned the case as incomplete for investigation on that point. *Sut-runjeeb Pal and others versus Hurree Doss Baboo* and others, 21st January 1841, . . . VII. 4

72. Claim preferred by the respondent to set aside an assignment, executed by himself, of certain religiously endowed property of which he had the management, on the alleged ground of the failure on the part of the assignee to abide by the conditions of the assignment, dismissed for want of proof of the alleged conditions. *Mohunt Sheo Suhye Doss versus Mohunt Sookh Deo Doss*, 25th January 1841, .. .. VII. 4

73. The fact of probate of a will, affecting property under the local jurisdiction of the *mofussil* courts, having been granted by the Supreme Court, does not bar enquiry into the authenticity and validity of the will. *Hurrischunder Chunder versus Ram Ruttun Mitter* and another, 30th January 1841, .. .. VII. 11

74. A claim for re-payment of a deposit against a collector by the heirs of a party deceased, who had deposited a sum of money as an investment in the public funds, but died before obtaining the promissory note, disallowed: sale of the promissory note and of distribution of proceeds among heirs ordered. *Collector of Chittagoug versus Musst. Mallika Banoo*, 2d February 1841, .. .. VII. 13

75. According to the Hindu law, the estate of a deceased surety, who engages to fulfil an obligation in the event of default by his principal, is liable for the debts of the principal, accruing on the engagement for the fulfilment of which the surety became responsible. *Chuttoorbhoj Ramanooj Doss versus Mohunt Humeram Doss* and others, 13th February 1841, .. VII. 15

76. In an action founded on the right by inheritance for possession of the estate, real and personal, of a party deceased, the lower court gave judgment in regard to the real estate, and referred the plaintiff to a separate suit for the personal property. Held by the *Sudder Dewanny Adawlut* that the order was irregular in the latter respect, and that the lower courts should have decided on the merits of the claim. *Musst. Ramdhun Dibbea versus Rooder Nurain Chowdree* and others, 10th February 1841, .. VII. 15

77. A decree of a court of competent jurisdiction, in an action for foreclosure of a mortgage, against the alleged heir in possession of the property of the deceased mortgagor, is no bar to the recovery of the property awarded by the decree on suit instituted by the rightful heir. *Rajah Kishen Chunder and another versus Mahanund Roy*, 15th February 1841, .. VII. 16

78. The value of certain *malgozarree* lands, not bearing a defined *jumma*, having been computed at the rate of an arbitrary *jumma* fixed upon it by plaintiff, instead of its estimated selling price, held that the plaintiff must be nonsuited. *Lall Purmessur Buksh Singh versus Rajah Oodwunt Purkash Singh*, 16th February 1841, .. .. VII. 19

79. An action having been brought to set aside a *kuboolcut*, or counter-part engagement of a lease, by a party against whom a summary suit had been previously preferred before the collector for arrears of rent under the same engagement, and in which a decree was given in favor of the summary plaintiff, subsequently to the institution of the regular suit to contest the *kuboolcut*, the *Sudder Dewanny Adawlut* permitted the plaintiff in the regular suit to file a supplementary plaint as an application to set aside the summary decree, as well as the *kuboolcut*, the cancelling of which formed the subject of his original plaint. *Anundee Ram Chuckerbuttee versus Hyder Allee* and others, 20th March 1841, .. .. VII. 21

80. An action in the Supreme Court on a joint bond, or promissory note, against one of the contractors, who alone was subject to the jurisdiction of that court, does not bar an action against the other co-contractor in the *mofussil* court. *Russik Chunder Neogee versus Omachurn Bannerjea* and others, 8th April 1841, .. .. VII. 25

81. Defamatory and libellous expressions, when used by a party in the course of a judicial proceeding, are not actionable, though punishable as a

contempt by the court in which they are used. *Hedger versus Maha Rancee Kummul Koomaree. Maha Rancee Kummul Koomaree versus Hedger*, 22nd April 1841, . . . . . VII. 25

82. The tender to the mortgagee of the money borrowed, by a person to whom the mortgaged property had been transferred by the mortgager, is sufficient to prevent a foreclosure. *Nubkomar Chowdree and others versus Kummul Kishen*, 28th April 1841, . . . . . VII. 30

83. Judgment creditors intervened in an action for foreclosure of a mortgage in which their debtor was defendant, their interest was held to entitle them to appeal from a judgment which tended to bar their right of execution against the real property of their debtor. *Ram Ruttun Roy and others versus Sumboo Chunder Roy and others*, 20th May 1841, . . . . . VII. 32

84. In an action under the law of inheritance, a third party intervened claiming a portion of the property, on the ground of purchase at a sale made in execution of a decree against the ancestor of one of the defendants: held that the decision of the court, as between parties, should embrace the whole of the property, leaving the claim of the third party to the determination of a separate action. *Musst. Soorja Koonwur versus Doosht Dowun Singh and others*, 27th May 1841, . . . . . VII. 33

85. Held that an action by the late proprietor to set aside a sale made in execution of a decree, an application to reverse which has been summarily rejected under the provisions of Section 5, Regulation VII. 1825, by the courts of original and appellate jurisdiction, is not barred either by the terms of that Section or by the rule of Construction No. 1129. *Sheo Gholan Singh versus Sultan Singh*, 12th June 1841, . . . . . VII. 35

86. In an action by a landholder for recovering rent-free lands, in which the suit was laid at one year's produce, instead of at the value prescribed for suits regarding rent-free lands, the plaintiff was nonsuited. *Ram Tunnoo Mundul versus Gunga Nuran Bonnerjee and others*, 16th June 1841, . . . . . VII. 37

87. In an action for certain lands held under a *pottah*, alleged by the lessee to convey a lease in perpetuity, but declared by the lessor to be conditional, the *pottah* itself not having been produced, it was held under the circumstance, that the lessor had not the power of summary ejectment, but should have sued to set aside the lease. *Teetoo Ram Huldar and others versus Panoo*, 17th June 1841, . . . . . VII. 37

88. The fact of the quantity of land comprised within a parcel for which the plaintiff sued, with mention of its boundaries, being somewhat in excess of that mentioned in the petition of plaint, held to be no bar to the recovery by the plaintiff of the entire parcel. *Ajaib Singh and others versus Hajee Begum*, 23rd June 1841, . . . . . VII. 39

89. Held that the civil courts are not authorised to take cognizance of suits for the recovery of costs incurred in criminal cases. *Nundkomar Fote-dar and others versus Robinson*, 3rd July 1841, . . . . . VII. 40

90. The defendant having pleaded in a case before a principal sudder ameen, that the plaintiff had greatly over-valued the property which formed the subject of action (such excess of valuation making the case appealable to the Sudder Dewanny Adawlut instead of to the zillah judge) the Court held that the principal sudder ameen was bound by the spirit of Section 5, Regulation XIII. 1808, to enquire into the plea before proceeding to try the merits of the case. It was further held, that a decree for landed property should specify in detail the property of which it awards possession, without referring to any other documents to determine what that property is. *Domun Singh and another versus Ushoor Khan Chowdree*, 3rd July 1841, . . . . . VII. 41

91. Property on which the plaintiff had a mortgage having been sold in execution of a decree obtained by a common bond creditor, the court held

that, notwithstanding the sale, the plaintiff should sue to foreclose the mortgage, instead of for the money lent by him, the sale having made no alteration in his position as mortgagee. *Kishenpershad Bonnerjee versus Ramchurn Paree*, 21st July 1841, .. .. VII. 42

92. Held that it was competent to the court, under special circumstances, to over-rule a part of the decree of the court of first trial, to which no objection had been taken in the appeal stage. *Ibid.*, .. .. VII. 42

93. The plaintiff who had obtained a decree from the Supreme Court for a sum of money, secured by a mortgage on property which had been sold in execution of a decree of a *mofussil* court, sued to have the property re-sold in satisfaction of the decree of the Supreme Court: judgment in favor of plaintiff. *Puddun Lochun Doss versus Esther Guerniere*, 25th August 1841, .. .. VII. 43

94. A party having acknowledged the justice of a decree given against him, was not allowed to impeach it in appeal preferred subsequently to such acknowledgment. *Laloo Ram Dullal versus Sheikh Mahomed Ishmail*, 7th September 1841,.. .. VII. 44

95. A decree of a zillah judge reversing a decree of the principal sudder ameen, without summoning the respondent, set aside as illegal. *Mohummud Hosein versus Mullik Najeeb Hossein and others*, 23d September 1841,.. .. VII. 46

96. Held that the failure to publish notice of sale on the property advertised, the sale having been made by the collector in execution of a decree of court, vitiates the sale. *Aond Beharree Lall and another versus Sheo Churn Tewarree*, 5th September 1841, .. .. VII. 48

97. In an action for real property, a third party, who claimed the proprietary right in the same in the court of the principal sudder ameen, on a judgment being given in favor of the plaintiff, appealed to the zillah court. The decree of the zillah court, in favor of such third party, upheld by the Sudder Dewanny Adawlut. *Chedee Lall versus Baboo Kishen Pershad*, 6th October 1841, .. .. VII. 52

98. A decree of the Sudder Dewanny Adawlut in a suit between two Armenians, whereby they, and another person then deceased, were declared to have been equally entitled to a certain estate, held to be sufficient evidence of the amount of the said deceased person's share in the estate in a subsequent suit at the instance of a party claiming directly under his will, and alleging him to have been entitled by Armenian law to the whole. *Gasper Maleum Gasper versus Edmund Kent Hume and others*, 30th November 1841, .. .. VII. 54

99. A deed of compromise executed by an Armenian lady possessed of two-thirds of an estate, both of which had descended to her from her father, who held one-third absolutely in his own right, and the other under the will of his grand uncle, which it was alleged had given him only a life-interest in that third, held to be binding on the lady's representatives (though not claiming in her right but directly under the will) as it appeared that, notwithstanding the deed of compromise, they were still left in possession of one full third of the estate, and there was no doubt of her competency to dispose of the other third. *Gasper Maleum Gasper versus Edmund Kent Hume and others*, 30th November 1841, .. .. VII. 54

100. In a claim for real property, the plaintiff denied the facts, and impugned the merits of a decree passed by the Sudder Dewanny Adawlut in an action regarding the same property between the ancestors of the parties to the present suit. Held, under these circumstances, that the former decree was binding as between the present parties. *Gabriel Avietick Ter Stephanos versus Gasper Maleum Gasper*, 30th November 1841,.. .. VII. 57

101. In an action for immediate recovery of real property, under the Hindoo law of inheritance, the lower courts decreed against the plaintiffs,

but provided for their reversionary interest on the death of the present incumbents. Held by the Sudder Dewanny Adawlut, under the circumstances, that such order was irregular, and that the lower court should have pronounced judgment upon the claim as preferred. *Udhet Singh and others versus Musst. Pran Piaree and others*, 27th December 1841, . . . . . VII. 61

102. In an action for possession of property purchased at a sale made by the Sheriff of Calcutta, in execution of a judgment of the Supreme Court, it is not competent to the Company's courts to enter into any enquiry as to merits of the decree of the Supreme Court, or of the proceedings in execution under it. *Hurpershad Ghose versus Chunder Kant Mookerjee*, 15th January 1842, . . . . . VII. 70

103. It is not competent to revenue officers engaged in making settlements under Regulation IX. 1833, or employed in the manner therein provided, to interfere in regard to any case which may already have been judicially determined by a court of civil judicature, or to proceedings in execution of a judicial award under which possession of property has been given. N. B.—The above is of course to be taken with the reservation laid down in Construction 1128, unless by order of the court, or with the consent of the parties. *Collector of Goruckpore versus Maharajah Chutturdharee Sahce*, 7th January 1842, . . . . . VII. 74

104. A decree of foreclosure of a mortgage does not bar enquiry into the claim of a claimant, not a party to the suit, for recovery of the same property. *Futteh Singh and others versus Bikramajit Singh*, 9th March 1842, VII. 76

105. In an action for land and mesne profits, the zillah judge having awarded the former and left the latter for future decision and adjustment, the Sudder Dewanny Adawlut held that the decree was incomplete, and remanded the case with instructions to the judge to pass judgment on the entire claim. *Ramnurain Sawunt versus Suroop Chunder Dutt and others*, 17th March 1842, . . . . . VII. 77

106. In the case of a bond or other instrument for the payment of money, the origin of the cause of action is to be reckoned from the date of the money becoming payable. See Construction 196. *Gunga Sahoo versus Bhookim Misser*, 23rd March 1842, . . . . . VII. 77

107. In the case of a suit transferred from the court of the sudder ameen to that of the principal sudder ameen, the Sudder Dewanny Adawlut held that the latter was bound to take the evidence *de novo*, instead of deciding upon the evidence taken by the sudder ameen. *Doorga Dutt versus Dirgopal Singh*, 24th March 1842, . . . . . VII. 78

108. In a suit instituted for the purpose of effecting a mutation of names in the collector's register of landed proprietors, on an apparent collusive understanding between the parties in order to defeat the rights of others, the Sudder Dewanny Adawlut gave judgment as between the parties agreeably to the admission of the defendant, but made all costs, including those of a claimant who intervened as a third party, chargeable to the plaintiff. *Goluknath Ray Chowdree versus Bhyronath Chowdree*, 29th March 1842, . . VII. 78

109. Held that in a suit laid at a sum exceeding 5,000 rupees, but in which the principal sudder ameen gives a decree for a sum less than that amount, the appeal from the principal sudder ameen's decree lies to the Sudder Dewanny Adawlut. *Rajah Nowul Kishore Singh versus Achumbit Ray and others*, 31st March 1842, . . . . . VII. 80

110. On the death of a respondent, his judgment creditors, with reference to the interest they had in shewing that the contested property belonged to their debtor, were permitted to defend the appeal. *Roopnurain Singh and another versus Buxshee Bhugwunt and others*, 4th April 1842, . . VII. 86

111. Two judges having come to the same decision in a case, but differing in regard to a material fact, a concurrence of opinion in which would have

led to a different decision by one of the judges, it was held that a third voice was necessary. *Rajkomar Deokinundun Singh and others versus Baboo Rughoonundun Singh and others*, 9th April 1842, . . . VII. 89

112. In a case of conditional sale, if the debt be not repaid, the lender, unless good and sufficient cause be shewn, has not the choice of suing for the money or for the property pledged, but is restricted to an action for the latter. *Mohanund Chaturjea versus Govindnath Ray and others*, 12th April 1842, . . . VII. 92

113. In a case of life lease, it was held that repeated transfers of the rights of the lessee, and length of possession, form no bar to the recovery of possession of the lands by the lessor, or his representative, on the death of the lessee. *Bishennath Biswas and others versus Muharajah Grischunder Deb and another*, 21st April 1841, . . . VII. 94

114. The plaintiff sued to set aside a sale, made in execution of a decree, of certain property alleged to have been previously purchased by him in the name of his daughter-in-law. As the latter, who was the nominal vendee, was not made a party to the suit, the Sudder Dewanny Adawlut nonsuited the plaintiff. *Juggernath Singh and another versus Syed Abdoollah*, 3d May 1842, . . . VII. 95

115. It is competent to the Sudder Dewanny Adawlut, in remanding a case for re-trial to the zillah court, to restrict the enquiry to any particular point or points. *Hur Shunker Nurain Singh versus Kishen Deo Nurain Singh and others*, 30th June 1842, . . . VII. 108

116. In an action for recovery of a debt on bond, the civil courts are not competent to dismiss a claim for interest solely on the ground of delay in suing for the debt. *Dhununjai Shah and another versus Harkalee Mitter and others*, 2nd July 1842, . . . VII. 111

117. Held that a party appointing a pleader, under Section 2, Regulation XII. 1833, but omitting to specify the amount of remuneration settled for, as required by Clause 5 of that Section, cannot recover costs of pleader's fees from the opposite party. *Syud Furzund Allee versus Musst. Ghakatee Begum and others*, 7th November 1842, . . . VII. 119

118. Held that an action by a person as friend, or next of kin to devisers under a will, one of the executors under the will being alive, is irregular, and dismissed accordingly. *Brij Ruttun Doss versus Joakim Gregoire Pogose*, 24th November 1842, . . . VII. 119

119. The plaintiff sued the defendants (a mother and her daughters) for recovery of a sum of money lent to the former on the security of a farming engagement of a certain village, the right of the mother in which was disputed by the daughters, who had obtained possession to the ejectment of the plaintiff. Under these circumstances, it was held by the Sudder Dewanny Adawlut that the zillah judge was wrong in declaring that the village was liable for the debt, and that he should have confined himself to giving a decree to the plaintiff for the money due to him, leaving the question as to the liability of property to the stage of execution of the decree. *Musst. Ummut-ul-hadi and others versus Syud Ali Buxsh*, 5th June 1843, . . . VII. 125

120. A case having been decided by the principal sudder ameen and zillah judge entirely by a reference to the records of other cases previously decided, the Sudder Dewanny Adawlut set aside both decisions, and remanded the case with instructions that the plaintiffs should be required to file the evidence necessary to support their claim. *Ram Suhance Chobee and others versus Enaiet Ali and others*, 22d August 1843, . . . VII. 130

121. A plaintiff, consenting through his duly appointed *wukeel*, to the settlement of his suit in court by the statement on oath of the defendant, cannot object to a decree of court founded on such statement. *Baypie*

Rajah Gungesh Chunder *versus* Suroot Chunder Sirkar, 29th August 1843, .. .. VII. 130

122. A treasurer of a collector having embezzled a sum of money, his security was called upon to make good the amount deficient. He deposited it, and received from the collectors three monetary obligations (the property of the treasurer) towards reimbursement of the sum paid by him. Subsequently Government absolved the surety, and directed re-payment of the amount deposited by him. On being required by the collector to restore the money obligations he declined to do so, and requested that the nominal value of them might be deducted from the amount payable to him. Held that the Government was absolved from all liability under the obligations, in the event of the surety being unable to realize the sums due on them from the parties who executed them. Sulleemoollah Chowdree *versus* Prawnnath Chowdree, 18th September 1843, .. .. VII. 134

123. The plaintiff married in Calcutta a girl of Dutch parentage, at the time of her marriage a ward of the Dutch Orphan Chamber at Chinsurah, but resident in Calcutta; and instituted the present action to recover from the executors of her grand-father's will (written in the Dutch language) a sum of money bequeathed by him to her. Held that the case must be tried according to the English, and not according to the Dutch law. Francis Botelho *versus* Revd. Mr. Lacroix and another, 2nd December 1843, VII. 139

124. It is irregular in a court to examine one of the defendants in a suit as a witness in proof of the plaintiff's claim. Kishen Mohun Race *versus* Raj Mohun Race and others, 2nd December 1843, .. .. VII. 141

125. Suit for recovery of money on a balance of account, opened with the plaintiff by the defendant, through a *gomashita*. The defendant denied the amount. The court remanded for further investigation, and observed on the principal sudder ameen's proceeding in converting a defendant into a witness, and in his directing the parties how to proceed in the case, such being in contravention of Circular Order 13th September 1843. Gour Chunder Podar *versus* Chunder Kullah, 8th February 1844, .. .. VII. 155

126. Held that the sale of an under-tenure for balances cannot be upheld in part, and reversed in part. The sale was however wholly upset, on account of the requisitions of Act VIII. of 1835 not having been complied with. Raja Kalee Sunker Ghosal and another *versus* Nubkoomar Race and others, 13th January 1844, .. .. VII. 148

127. Held that the accounts of a Government office require to be proved as those of an individual. Salt Agent of Bulloah *versus* Chundermonee and others, 24th May 1844, .. .. VII. 171

128. The zillah court reversed the sale of a *talook* made in execution of a summary decree, which summary decree was itself subsequently set aside, and directed the purchaser to sue the decree-holder for the price of the estate. The Sudder Dewanny Adawlut confirmed the reversal of a sale, but declared the auction purchaser entitled at once to the recovery of the price paid by him, which they decreed against the decree-holder, with interest from the date when the money was paid. Koonwur Sutchurn Ghosal *versus* Ruggonath Race and others, 5th June 1844, .. .. VII. 172

129. Held that a suit between partners in a banking concern should be laid for general adjustment of accounts, and not for particular items. Chintaman Abustee *versus* Ram Koor and another, 17th July 1844, .. .. VII. 177

130. Held that an appellate court interfering with a decree of a lower court, cannot pass any decision unfavourable to parties not appealing therefrom, and not otherwise before the appellate court, without allowing them the opportunity of urging any thing in their behalf. Gopeenath Koond and another *versus* Lakhun Bukshee and others, 22nd August 1844, .. VII. 180

131. In an action for arrears of rent for 20 years, plaintiff entitled on proof to a decree for such period as may not be barred by the statute of limitation. Radhamohun Ghose Chowdree *versus* Ramchand Mustofee and others, 26th September 1844, .. .. VII. 182

132. In a case in which a *razeenah* and *solehnameh* were executed by both parties, a decision in conformity therewith (although in reversal of the judgment of the lower court) was passed by a single judge of the Sudder Dewanny Adawlut. Tara Chand Buttacharjee *versus* Ramjye Dutt and others, 19th April 1845, .. .. VII. 202

133. Difference as to some of the reasons of the decree of a lower court, while there is agreement as to the others, does not constitute the difference of judgment which requires the single judge, thus partially differing, to refer the case for the decision of a full court under Act II. 1843. Issurehunder Ghose *versus* Nil Kummul Pal Chowdhree and others, 16th January 1846, .. VII. 223

134. Held, by the Sudder Dewanny Adawlut, in a suit for succession to an estate, that the illegitimacy of a claimant could not be urged in the appellate court as conferring a title on disproof of his legitimacy, alone pleaded in support of it in the lower court. Chowdhreea Run Murdhun Sein *versus* Sahib Perlhad Sein, 26th May 1847, .. .. VII. 292

135. Compliance with the motion of a defendant, without consent of plaintiff, discharging certain co-defendants, who were then converted into witnesses for the defence, held to vitiate the proceedings, which were quashed and case remanded to be decided as preferred. Shama Mohun Bose *versus* Rammurain Mookerjee and others, 7th August 1847, .. VII. 377

136. In a suit for possession of lands, giving rise to the question of boundaries, the latter should be ascertained before judgment is entered, and not left, as in the present instance, for after determination : case remanded to be disposed of accordingly. Mohummud Fiaz and others *versus* Suzenna Beebee and others, 11th August 1847, .. .. VII. 379

137. Case remanded as court of first instance (moonsiff) had made some of the defendants witnesses in the cause. Course to be pursued when parties are included as defendants for fraudulent purposes. Ramlochan Goh *versus* Gooroo Pershad Goh and others, 11th August 1847, .. VII. 380

138. A civil court is competent at the suit of one not a party to the former action, to set aside its own decree in it, if shewn to have been collusive-ly obtained. Construction No. 1299. Guneish Dutt and others *versus* Ramdya Singh and others, 7th September 1847, .. .. VII. 391

139. A title founded upon possession should be maintained against a claim of right, until the latter be judicially established. Teekoo Multoon and others *versus* Tulsee Singh and others, 19th February 1848, .. VII. 441

140. A claim being considered undervalued, the plaintiff should be non-suited without going into the merits of the case. Bhuggeruth Das *versus* Bishenpreca Bewa and others, 8th March 1848, .. .. VII. 444

141. Construction 980 cannot be extended to claims under the general law of inheritance. Kallee Shunker Pal and others *versus* Musst. Phool Mala and others, 25th March 1848, .. .. VII. 447

142. On re-trial and dismissal on its merits, upon an appeal irregularly admitted of a case at first decided *ex parte* in favor of plaintiff, the course adopted by him was held to have cured all defects in the proceedings of the lower court; special appeal dismissed. Deybee Pershad *versus* Madhub Patuk and others, 4th April 1848, .. .. VII. 479

143. Proof of occupancy of the lands in a regular suit, rent of which has been sued for summarily, is not sufficient to establish the correctness of the summary award. Necloo Mula *versus* Anund Chundur Nag and others, 23rd May 1848, .. .. VII.

144. Original plaint dismissed, on the ground, although not pleaded, of the suit being opposed to Section 22, Act XII. 1841, now Section 21,



Act I. 1845. Gujput Race and others *versus* Degumber Suahce, 17th June 1848, .. .. . VII.

- Sec 'Issue,' No. 1.  
 'Deeds,' No. 1.  
 'Appeals,' Nos. 3, 4, 6.  
 'Estoppel,' No. 1.  
 'Limitation,' No. 60.  
 'Adoption,' No. 48.  
 'Damages,' No. 10.

### PRAISCHITTA.

See '*Praischitta*,' Part II. Hindu Law.

### PRECEDENCE.

See '*Precedence*,' Part II. Hindu Law.

### PRE-EMPTION.

Sec '*Pre-emption*,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

### PRESUMPTION.

1. A son having made a transfer of certain lands, the property of the father, and the father having made no objection for 9 years, his concurrence in the act of his son will be presumed. Sheodial Race and others *versus* Dhunput Race, 24th February 1806, .. .. . I. 129

2. The fact of a person not having been heard of for 50 years, warrants the presumption that he is dead. Bulraj Race *versus* Pertaub Race and others, 17th March 1812, .. .. . II. 14

3. A and B claim an estate under bills of sale from C. That of B is set aside though bearing an anterior date; the possession of the titles by A, and other circumstances, creating strong presumption of fraud on the part of B and C. Chowdry Inayuttullah *versus* Messrs. Alexander and Co., 20th January 1834, .. .. . V. 341

Sec 'Agents,' No. 4.

'Bills of Exchange,' No. 3.

'Deeds,' No. 16.

'Frauds,' Nos. 3, 4, 5.

'Mortgage,' No. 9.

'[Private] Sales,' No. 11.

'Acquisitions,' Nos. 2, 10, 19.

'Adoption,' Nos. 15, 19.

'Ancestral Property,' Nos. 9, 10.

'Gifts,' No. 11.

'Dower,' Nos. 14, 17, 28.

'Marriage,' Nos. 4, 9, 11.

'Presumption,' *passim*.

'[Private] Sales,' No. 4.

} Part II. Hindu Law.

} Part III. Mahomedan Law.

### PRIMOGENITURE.

See '*Primogeniture*,' part II. Hindu Law.

### PRINCIPAL.

Forfeiture of—See '*Interest*,' Nos. 1, 12, 13, 19, 31.

### PRIVATE SALE.

Sec '*Sale*,' *passim*.

### PRIVILEGES.

See '*Golabs*,' *passim*.

'Privileges,' Part II. Hindu Law.

## PROFITS.

See 'Alluvion,'  
 'Mesne Profits,' *passim*.  
 'Practice,' Nos. 22, 48, 67, 69.

## PROHIT.

See 'Prohit, Part II. Hindu Law.

## PROOFS.

See 'Evidence,' *passim*.  
 „ Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

## PUDARGHA.

See 'Pudargha,' Part II. Hindu Law.

## PUNCHAYUT.

See 'Arbitration,' No. 3.  
 'Punchayut,' Part II. Hindu Law.

## PURCHASES.

See 'Agent,' Nos. 1, 3, 7, 8, 12, 15, 16.

## PUTNEE TENURES.

1. The right of the holders of *putnee talooks* of the second and lower degrees in the zemindaree of Burdwan, are not liable to be cancelled by the resignation of the *putneedar* who granted the *talook*: it can only be cancelled by a public sale for arrears of revenue. Kowla Kunt Mookerjee *versus* Ram Mohun Gosayn and others, 21st December 1819, .. II. 325

2. On the forfeiture of a *putnee* tenure for arrears of rent, the *dur-putnee* tenures under it cease also, though the holders of them be not defaulters, and though, subsequently to the default of the *sudder putneedar*, the zemindar may have required them to pay their rents into his *cutcherry*. Mohun Geer Mohunt *versus* Radha Mohun Ghuttuc, 25th September 1826, .. IV. 179

3. Held that it is lawful for a zemindar to conclude a settlement with other individuals for a *putnee talook* with the permission of the zillah court, (the *sudder putneedar* having fallen in arrears) though his sharers, whose names are not recorded in the zemindaree record, had deposited their *quota* of the arrears in the treasury of the zillah; but they were declared at liberty to sue the *sudder putneedar* for any damages they might have sustained by his default. Ram Doolal Misser and others *versus* Ram Mohun Sawunt and others, 29th December 1827, .. .. IV. 295

4. A asserted a right to hold an inferior *putnee*, as part of a *sudder putnee*, the whole of which had been acquired by B from the zemindar, under a sale preceded by an award of arrears against the apparent *sudder putneedar*, and by an auction. On defect of clear evidence to the subdivision, and therefore to the distinct tenancy in chief of the person from whom A held, ruled that his tenure could not be protected from the operation of Section 12, Regulation VIII. 1819. Huri Soondree Dossea and others *versus* Kali Doss Bose and others, 30th August 1830, .. .. V. 64

5. In 1810, A, the zemindar, proceeding summarily under Regulation VII. 1799 against B, his *putneedar*, for a defined balance of rent, the judge found something due; but, not able to make a specific award, he referred A to a civil action; providing, however, that he might sell the under tenure, and settle with C. A did settle with C at a diminished rent.

He then sued B for a balance of rent, after setting off the price received for the tenure. Part of his claim was dismissed in 1812, as not exigible, and part awarded. In 1823 B sued A and C to recover the *putnee* tenure, resting his right on pleas by which he failed to repel the claim of A in 1812. Held, that the claim was not cognizable. *Mudun Mohun Rai versus Raja Tej Chunder and others*, 9th January 1832, .. .. V. 157

6. A and B purchase property from C, under condition not to re-sell to any one but C. Ruled, that a grant of a *putnee talook* of part of the property by A and B to D, a stranger, is a violation of their part of the engagement, and as such was set aside. *Muddoo Soodun Sundyal versus Pran Kishen Mitter and others*, 1st March 1836, .. .. VI. 56

7. A purchases an estate from B: it subsequently appears that the whole estate did not belong to B, but that a fractional part of it was held by him on *putnee*. Held that the purchaser is liable for the *putnee* tenure, as long as possession is held under the purchase. *Ashota Dey and another versus Bhyrub Chunder Bose*. *Muharane Kumul Koomari versus Bhyrub Chunder Bose*, 21st September 1837, .. .. VI. 183

8. A civil court cannot compel a *dur-putneedar* to pay the rents of the *putnee* tenure, due to the proprietor. *Ibid*, .. .. VI. 183

9. The purchaser at a sale in execution of a decree of court, of the rights and interests of a *putneedar*, has no just claim to land situated within the *putnee talook*, which had been granted by the zemindar rent-free to a third party, before the date of the execution of the *putnee*, and of which the *putneedar* never had possession. *Guru Churn Puramanick and another versus Odaynurain Mundul*, 28th January 1840, .. .. VI. 281

10. Held that under Section 9, Regulation VIII. of 1819, a *dur-putneedar* may buy the *putnee* tenure, if he do not fraudulently withhold any balance due from him to his *putneedar*. *Fukeer Chund Mitter versus Messrs. Hills, White and Co. and others*, 20th January 1844, .. VII. 153

11. In an action for recovery of the price of a *dur-putnee* tenure, lost to the plaintiffs by the defendant having allowed the sale of his *putnee* tenure, the Sudder Dewanny Adawlut decreed against plaintiffs:—*first*, because the plaintiffs were themselves the purchasers of the *putnee* tenure; and, *second*, because, as *dur-putneedars*, they were in balance at the time of the sale of the *putnee* tenure (see Clause 6, Section 17, Regulation VIII. of 1819.) *Fukeer Chund Mitter versus Messrs. Hills, White and Co.*, 20th January 1844, .. .. VII. 154

## PUTRICA-PUTRA.

See ‘*Putrica-Putra*,’ Part II. Hindu Law,

## RAZEENAMEH.

See ‘*Deeds*,’ Nos. 9, 15.

‘*Duress*,’ No. 1.

## RECEIPTS.

See ‘*Account*,’ No. 1.

‘*Damages*,’ Nos. 1, 2, 8.

‘*Debts*,’ No. 13.

## RECESSION.

See ‘*Alluvion*,’ Nos. 3, 4, 5, 7.

## REDEMPTION.

See ‘*Mortgage*,’ Nos. 5, 11, 14, 15, 17, 26, 34, 35, 39, 40, 43, 46, 48, 50, 53.

REGISTRY OF DEEDS.

See 'Civil Courts,' No. 1.

REGISTRY OF NAME.

See 'Sale,' Nos. 8, 9.  
'Settlement,' Nos. 2, 13.

REGULATIONS,

Promulgation of. See 'Act of Parliament.'

RELEASE, DEED OF.

See 'Deeds,' No. 14.

RELIGIOUS ENDOWMENTS.

See 'Religious Endowments,' Part II. Hindu Law.  
„ Part III. Mahomedan Law

RELINQUISHMENT OF CLAIM

See 'Relinquishment of Claim,' Part II. Hindu Law  
„ Part III. Mahomedan Law.

RENT.

See 'Assessment,' No. 28.  
'Leases,' No. 24.

RENT-FREE TENURES.

1. Claim by the appellant to recover certain lands, and hold them as *lakhiraj*, dismissed on proof that the lands, though once *lakhiraj*, had been resumed, and included in the assessment of a *pergunnah* purchased by the respondents. Byraghee Pandeh *versus* Gopce Mohun Thakoor and another, 3d February 1806, . . . . . I. 123

2. Claim by the zemindar for the rent of lands, alleged by the tenants to be rent-free. Rent of part of them, found to be due to the zemindar, adjudged. Claim to the remainder rejected. *Lakhiraj* tenures exceeding 100 *biggahs*, and held exempt from assessment, though under incompetent grants, before 1st December 1790, not being assessable, but at the suit of Government under Sections 7 and 11, Regulation XIX. 1793. Radha Kishen Rai and others *versus* Ram Mohun Rai, 17th March 1806, . . I. 130

3. On a claim by the collector of Moorsshedabad, on the part of Government, for the right of assessing certain lands, held exempt from revenue as *dewutter*: part adjudged to be assessable, as held under incompetent grants; the remainder considered to be legally *lakhiraj*, as having been granted before the Company's accession to the *Dewanny*. Collector of Moorsshedabad *versus* Bishen Nath Rai and another, 16th January 1807, . . . . I. 171

4. Lands held by a zemindar for a religious appropriation, of which he has the superintendence, are not considered as part of the zemindaree, provided the endowment is valid under the Regulations; and the fact of the zemindar having himself made such endowment, does not invalidate it, if antecedent to the Company's grant. *Ibid*, . . . . . I. 174

5. Claim on a *talookdar* to recover possession of certain lands, as having been granted to the claimant's ancestor, exempt from revenue, under the title of *shewutter*. Lands adjudged, on proof of grants made before the *Dewanny*; with the exception of 15 *biggahs*, the grant of which was subsequent to the *Dewanny*, and not sanctioned by Government. *Mohunt Ram Pershad versus Mohunt Odaungir*, 5th June 1807.. . . . I. 183
6. Suit by the *zemindar* for the rent of certain lands held by the defendant, on a *lakhiraj*, or rent-free tenure, dismissed as irregular under the Regulations: the extent of the land claimed exceeding 100 *biggahs*. The plaintiff left to bring a new suit for any lands less than 100 *biggahs* alienated at one time, since the Company's accession to the *Dewanny*. *Sham Chand Baboo and another versus Rajinder Mokerjee*, 26th December 1811.. . . . I. 363
7. The sanction of the Board of Revenue is required for a suit to assess resumable tax-free land, exceeding 100 *biggahs* in extent, and alienated by a single grant prior to the 1st December 1790. *Ibid.*.. . . I. 363
8. Lands claimed as *lakhiraj* under title deeds registered in the *bazeer-zumeen-dufter*, but differing from the records of that office as respects the lands specified on the back of the title deeds, held to be a valid tenure exempt from assessment, only as far as the title deeds correspond with the records of the *bazeer-zumeen-dufter*. *Musst. Nund Koonwur Beebee versus Ram Lochun Singh and others*, 21st June 1813.. . . II. 66
9. A *birmooter* tenure free from assessment, having been erroneously included in the assets of an estate sold by auction on account of arrears of public revenue, is recoverable from the public purchaser, at the suit of the proprietor. *Ram Doolal Misser versus Mudun Mohun Bhuttacharj and others*, 17th April 1815.. . . II. 143
10. A claim to recover a *birt* tenure, on the plea that as there was no specification thereof in the bill of sale, it was not included in the assets of an estate sold by order of the Supreme Court, dismissed by the *Sudder Dewanny Adawlut*, on the grounds of the bill of sale plainly stating that all the lands, both *khiraj* and *lakhiraj*, included in the said estate, together with all the right, title and interest of the proprietor therein, were thereby conveyed to the purchaser. *Kishen Mohun Banerjee and others versus Rammunder Deb Rai*, 17th October 1816.. . . II. 197
11. The resumption of a rent-free tenure, though confirmed by the Board of Revenue, is not valid without the enquiry directed in Sections 3 and 4, Regulation VIII. 1811, [or Section 5, Regulation II. 1819]. *Collector of Bundelkund versus Ilachee Geer*, 30th November 1820, . . . III. 56
12. Held that *altunga* lands are inheritable property, and ordered that they should be divided among the heirs of the original proprietor,—their opponents claiming under a deed of gift alleged to have been executed in their favor by a person to whom the Patna Provincial Council had made a grant of the *altunga* lands *de novo*, and in whose favor a decree to hold them had been passed by the same authority; it appearing that the *Persian* decree [which the *Sudder Dewanny Adawlut* considered themselves bound to follow] awarded to the donor possession as manager only for the ancestor, and that no grant of lands, the produce of which exceeded 1000 rupees per annum, could be valid without the sanction of the Supreme Government, which had not been obtained in this instance. *Omur Khan versus Aboo Mahomed Khan and others*, 13th January 1823.. . . III. 179
13. The original proprietor of lands, granted by the ruling power on a tenure [*aymah*] free of assessment, having, together with his successors, for a series of years, received a fixed sum from the grantee, in lieu of his proprietary rights, the person to whom those rights may be subsequently transferred, has no claim to *malikana* at the rate of ten per cent. *Cheyn Singh versus Burkutoonissa and another*, 29th December 1823.. . . III. 278

14. Held that a rent free-tenure, confirmed by the former Lieutenant Governor of the ceded provinces, Mr. H. Wellesley, is not resumable. *Raja Putnee Mull versus* Collector of Allahabad, 14th February 1824, . . . III. 304

15. Subsequent to the date of the above decision, Regulation XIV. 1825, was enacted, to declare that no grants to hold lands free of assessment, unless made or confirmed by the persons specified in that enactment, should be held valid; and to provide retrospectively that any decision passed in opposition thereto, might be reviewed without reference to limitation of time, and that the application for review in such cases should be decided by a majority of the judges of the Court. A petition for review having been presented on behalf of Government, under these rules, it was finally rejected on the 29th April 1826; it appearing that *raja Putnee Mull* had held possession of the disputed lands as a rent-free tenure under a *sunnud* from the nuwab Assufood Dowlah from the year 1204 Fuslee, [1796-97 A. D.] up to the period of the Company's accession, and that consequently the merits of the case could not be affected by the question whether the Lieutenant Governor was or was not competent to make or confirm the grant. *Raja Putnee Mull versus* Collector of Allahabad, 29th April 1826, III. Note. 306

16. On a claim by the grandson of the original grantee to certain rent-free lands and a money allowance, conferred as *jageer* on his ancestor by the former rajahs of Benares, and confirmed by Messrs. Hastings and Fowke; held that the land tenure should endure under such confirmation, but that the money allowance should be discontinued, no mention of its being hereditary having been made in the original grant. *Collector of Benares versus* Muha Nuran Singh, 14th July 1824, . . . III. 390

17. Lands granted as a rent-free tenure in *Pudargha*, [literally "water for laving the feet,"] are not resumable according to Hindu law; and the management of them having been resumed by the officers of Government, who accounted to the grantee for the proceeds, held that the right of tenure is not thereby affected. *Collector of Bundelkund versus* Churun Dass Byragee, 1st December 1824, . . . III. 415

18. Claim to possession of *takhiraj* lands dismissed,—the quantity claimed being differently stated in a former summary suit,—nine years having elapsed since the dismissal of that suit,—and the *tulad* produced in support of the claim not being deemed sufficient proof. *Ram Koomar Rai versus* Ram Pershad Buha, 15th March 1835, . . . IV. 36

19. In a claim to hold certain lands rent-free, there being no *sunnud*, and no proof of the lands having been held as *takhiraj* since 1765, the Court rejected a document purporting to be an order of the collector in 1787, on the grounds either that it was a forgery, or had been obtained by fraud and misrepresentation. *Ram Pershad Sircar versus* Oddey Nuran Mundul and others, 15th May 1826, . . . IV. 155

20. In a suit for land fraudulently alienated as rent-free by the manager since the Company's accession to the Dewanny, held that the rules relative to the resumption of rent-free lands do not apply. *Sheikh Burkut Ali and another versus* Sheikh Khoda Buksh and others, 6th February 1827, . . . IV. 208

21. In a case of the illegal resumption of two *mouzahs*, which had been conferred as an hereditary rent-free tenure on the ancestor of the claimant before the Company's accession to the Dewanny, it was held by the Sudder Dewanny Adawlut that the claimant was entitled not only to the Government share of the rents, but to the absolute possession of the lands, without reference to the proprietor's rights in whomsoever originally vested; the grant having been made unlimited, although at one time a money payment had been apparently made in lieu of it by consent of the grantee. *Raja Girdhur Nuran and others versus* Rajah Chutter Singh, 19th February 1827, . . . IV. 219

22. In a claim to hold certain lands as rent-free, a *sunnud* of the zemindar was produced dated in 1196 Bengalee, purporting to be a renewed one, in consequence of the destruction of the former title deed; but there being no other proof of the claim, it was held to be inadmissible and dismissed accordingly. *Radha Nath Chattoorjee versus Neel Komul Pal Chowdry and others*, 6th March 1827, . . . . . IV. 228

23. Certain lands in zillah Suharunpoor were claimed to be held rent-free in virtue of two *sunnuds* granted by Madho Rao Scindia, one of which, dated 29th *Zeekad*, 27 *Juloos*, conferred the *mouzah* in question as *muddud-mash* on Shah Abdoola, and other *fukeers*, but had never been registered: the other dated 8th *Shaban*, 32 *Juloos*, confirmed the grant of the *mouzah* to Shah Abdoola, Shah Hamidoola and other *fukeers*, and had been duly registered, but did not distinctly specify the nature of the tenure intended to be conferred. The Sudder Dewanny Adawlut, finding that the *mouzah* was registered in the quinquennial register as a *muddudmash* tenure, conferred by Madho Rao Scindia on Shah Abdoola and other *fukeers*, on the 29th *Zeekad*, 27 *Juloos*; and concurring with their law officers in the opinion, that the intention of the grantor to confer a permanent tenure was clearly inferrible from the words 'and other *fukeers*,' which occurred in the *sunnud* dated the year 32 *Juloos*, and which had been duly registered; and advert- ing to the fact of the grantees and their descendants having enjoyed uninter- rupted possession of the *mouzah* until its attachment on the part of Govern- ment, upheld the claim, and decided that the lands were not liable to re- sumption and assessment. *Shah Uzeezoollah versus Collector of Suharun- poor*, 9th August 1828, . . . . . IV. 312

24. A grant from the British Government, conferring and releasing an alleged pre-existing *lakhiraj* tenure, is of no avail against the grantor, if ob- tained by the grantee by fraud and misrepresentation. *Rajah Surrujjeet Singh versus Collector of Bundelkund*, 15th March 1830, . . . . . V. 19

25. In 1805, A obtained a decree in the zillah court of Hooghly against B, the auction purchaser of a part of his zemindaree, for 565 *biggahs* as part of 4,400 *biggahs*, his ancestrel *dewutter* lands. This decree was confirm- ed by the provincial court, and the special appeal of B to the Sudder De- wanny Adawlut was withdrawn. In 1808 A sued C, also auction purchaser of another portion of his zemindaree, for 325 *biggahs* as part of the said 4,400 *biggahs*. His claim was dismissed in the zillah court of the 24- Pergunnahs, on the ground of his *lakhiraj* tenure not being proved. This decision was confirmed by the Calcutta provincial court; and A's petition of special appeal rejected by the Sudder Dewanny Adawlut on 14th March 1822. Subsequently A brought a third suit in the Calcutta provincial court for 562 *biggahs*, as part of the same *dewutter* lands against D, the vendee, of a third auction purchaser of a portion of his zemindaree; and his claim was dismissed, on the ground of defect of proof of tenure, and the re- sult of the action against C. But the Sudder Dewanny Adawlut in appeal reversed the decision with reference to the result of A's action against B, and proof of claim; and suggested a review of the order of the 14th March 1822, and [application having been made] a review was granted and judgment was ultimately passed in favor of A, on his suit against C—the adverse judg- ments of the zillah and provincial courts being reversed. Leave to sue for mesne profits was granted. *Kali Pershad Rai versus heirs of Khela Ram Mukhopudia*, 17th May 1832, . . . . . V. 207

26. A sued to recover lands, as his rent-free *birmooter* tenure from B, who had illegally ejected him. B pleaded that the lands were part of his assessed estate, purchased at auction. A obtained a decree in his favor, though he had no title deeds and the village was mentioned in the auction list. *Ram Ruttun Rai versus Sumbhoo Chunder Mujmoodar and others*, 2d August 1832, . . . . . V. 221

27. A, a zemindar, established by law that B's title to hold lands, less than 100 *bigga*hs, as *lakhiraj*, was invalid, and that he was entitled to resume and assess. Such judgment did not exempt A from liability to B, for profits, on part of the lands of which A had taken possession prior to his title to assess being established. *Birj Nath Baboo versus Rugho Nath Ojah*, 30th August 1832, .. .. . V. 231
28. In a *sunnud* the situation of the lands bestowed by it as a rent-free tenure was not specified; but this having been satisfactorily proved by a subsequent writing of the donor, the *sunnud* was upheld. *Mr. Francis Harris versus Debee Pershad Chattebbyrdar* and another, 24th January 1835, .. VI. 17
29. The plaintiffs sued to set aside engagements entered into by the collector with the heirs of the grantee of a resumed *lakhiraj* tenure, designated *sir shikun*, and to have engagements made with themselves as *maliks* in virtue of their proprietary right. Claim dismissed, it appearing to the Court that the settlement had been rightly made with the heirs of the grantee. *Sheikh Acher Ali* and another *versus* Surrubject Singh and others, 28th May 1836, .. .. . VI. 68
30. The plaintiff sued to obtain the reversal of a resumption made by the revenue officers of a *nankar* village, held by him under a deed of gift from his adoptive mother, who had herself obtained it by gift from her husband, the original grantee, on whom the grant was conferred by the Nazim of Bengal and Behar in terms [ *ba-furzundun* ] which implied an hereditary tenure. The defendants, being the Government and the *maliks* or proprietors with whom the settlement had been made, pleaded, *inter alias*, the illegality of the gift of the plaintiff. The Government having at one time virtually recognized the right of the donor of the plaintiff by having relinquished to her the village after an interruption of possession, the *Sudder Dewanny Adawlut* would not admit the plea, considering that the legality or otherwise of the gift could only be disputed by the heirs at law of the donor of the plaintiff. *Government and Rajah Girdher Nurain versus Maharaja Keerut Singh*, 16th August 1835, .. .. . VI. 100
31. Held by the *Sudder Dewanny Adawlut*, with reference to the terms of Clause 1, Section 2, Regulation III. 1828, that in a suit to set aside the resumption of a *lakhiraj* tenure made by the revenue authorities, before the enactment of Regulation II. 1819, the jurisdiction of the civil courts is not barred by Clause 4, Section 2, Regulation III. 1828. *Ibid.*, .. .. . VI. 100
32. Held that an action cannot be maintained against Government for *wasilat* in the case of rent-free lands legally resumed, but afterwards released from assessment by Government as a matter of favor. *Rajah Ram Kooer versus The Government* and others, 6th May 1844, .. .. . VII. 159
33. A zemindar in whose estate, lands, the *lakhiraj* title of which is disputed, are situate, should be made a party to the suit. *Purkhit Sircar* and others *versus* Purmanund Rae and others, 15th July 1847, .. VII. 353
34. Held that, under the circumstances, a zemindar had not power to cancel the grant of a small specific portion of land rent-free, for the express purpose of digging a tank for the benefit of the village. *Hurree Mohun Das* and others *versus* Pran Kishen Rae, 18th August 1847, .. VII. 384
35. A claim to hold as *lakhiraj* being of the nature of a special plea, proof of it rests with the party advancing it. *Jugmohun Sein* and others *versus* Syudooddeen Khan and others, 14th March 1848, .. .. . VII. 472

#### RENUNCIATION.

See 'Renunciation,' Part III. Mahomedan Law.

#### REPRESENTATION.

See 'Representation, Right of,' Part III. Mahomedan Law.



# RESIGNATION.

See 'Putnee Tenures,' No. 1.

# RESUMPTION.

See 'Rent-free Tenures,' *passim*.

# RETIREMENT FROM THE WORLD.

See 'Retirement from the World,' Part II. Hindu Law.

# RETRACTION.

See 'Retraction,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

# REVIEW OF JUDGMENT.

1. A plea of insanity set up by the plaintiff, not having been investigated, a review was admitted and the case sent back for a new trial. *Tubeeb Shah versus Budderoodeen*, 24th July 1822, .. .. III. 162

2. A claim to *birt mahabraminee* having been dismissed, a review of judgment was admitted on suspicion that the *pundit*, on whose *bewustha* the special appeal was decided, had taken a bribe to induce him to give a favorable answer. But it appearing that his exposition of the law was correct, the judgment was confirmed. *Nund Ram and others versus Kashee Pandi and others*, 30th June 1825, .. .. IV. 70

3. Messrs. Rattray and Turnbull admitted a review of the judgment passed by themselves. Mr. Rattray, on hearing the review, proposed to confirm the judgment; and as Mr. Turnbull had left the Court, sent on the case for another voice. Messrs. Shakespear and Walpole were of opinion that Mr. Rattray was competent singly to confirm, and that the reference to another judge was unnecessary. *Koul Nath Singh versus Jugroop Singh and others*, 20th February 1830, .. .. V. Note. 16

4. On the 30th December 1820, a judge of the Sudder Dewanny Adawlut struck an appeal off the file, on the compromise of the guardian of an infant appellant with respondent. On application of the appellant, at the end of 11 years [3 years after the age of 16 attained], review was admitted by a single judge, and appeal revived on the ground that there was no apparent benefit by the withdrawal of the appeal. *Rajinder Nurain Adhekari and another versus Syud Abdul Hakim and others*, 19th July 1833, .. .. V. 307

5. Review admitted *ex parte* on the ground of obvious error, without summoning the opposite party to shew cause. *Ibid*, .. .. V. 307

6. Though the rejection of a petition of review by the deciding judge is final, yet the deciding judge having waived his objection to the appeal being re-heard, the review was admitted. *Fukeer Chund Sein and another versus Pran Kishen Huldar and others*, 20th July 1836, .. .. VI. 88

7. An application for a review of judgment rejected by the deciding judge, cannot be admitted by any other judge. *Aulim Chund Dhur versus Bejai Govind Bural*, 26th March 1838, .. .. VI. 224

8. A review of judgment having been admitted in consequence of a slight difference in the opinion of the deciding judges; held, that their opinions are not thereby cancelled, but are to be taken into account in the final disposal of the case. *Nuwab Syud Mahomed Ali Khan versus Nigarara Begum and others*, 18th June 1840, .. .. VI. 290

9. The opinions recorded by judges of the Sudder Dewanny Adawlut on a first decision, are not set aside merely by the admission of a re-hearing, or review of judgment. *Musst. Hukeemun and others versus Meer Kubeer Hossein and others*, 3rd April 1842, . . . . . VII. 81

See 'Appeals,' Nos. 13, 18, 20.  
 'Practice,' Nos. 18, 32, 56.  
 'Rent-free Tenures,' Nos. 15, 25.

### RYUTS HOLDINGS.

1. Where *ryuttee* holdings (in this case of *wuuff* lands) have been habitually sold under former landlords, such right of transfer must be respected by their successors, until cancelled by an action at law. *Moulvee Ubdoolah versus Rumzoo Dye*, 5th June 1847, . . . . . VII. 311

### RIVER.

See 'Alluvion,' Nos. 2, 3, 4, 5, 6, 7.

### RUFFANAMEH.

See 'Ruffanameh,' Part II. Hindu Law.

### RULING POWER.

See 'Ruling Power,' Part III. Mahomedan Law.

### SACRIFICIAL FEES.

See 'Sacrificial Fees,' Part II. Hindu Law.

### SALES.

#### PUBLIC SALES FOR ARREARS OF GOVERNMENT REVENUE.

See 'Auction Sales,' *passim*.

#### PUBLIC SALES IN SATISFACTION OF DECREES.

See 'Attachment,' Nos. 1, 2.

#### CONDITIONAL SALES.

See 'Mortgage.'

### SALES. [PRIVATE.]

1. Claim by the father of the appellants to recover certain lands sold to the respondent by one of claimant's sons, on the plea that the son's act was not authorized: the contrary appearing from circumstantial proof, judgment given against the claim. *Sheodul Rai and others versus Dhunput Rai*, 24th February 1806, . . . . . I. 128
2. Claim of respondent to certain lands as having been purchased by him from the appellant, which the appellant denies, stating the lands to be the property of a third person to whom he is agent. Judgment against the

claim, on defect of proof, joined to strong appearances of fraud. *Lukhi Kaunth Rai versus Birj Nath Rai*, 25th August 1806, .. .. I. 157

3. Claim to certain lands, as included in a *pergunnah* sold to the plaintiff at public auction, but withheld by the defendant on the plea of a prior private purchase from the late zemindar. The private sale adjudged invalid, [although the land had been separated and assessed by the collector,] as the sanction of the Board of Revenue, which the Regulations require in such cases, had not been obtained; and the Board re-annexed the lands to the *pergunnah*, and included them in the public sale. Judgment for the claimant. *Sham Rai and another versus Collector of Jessore and another*, 5th July 1808, .. .. I. 239

4. Claim for lands as belonging to a zemindaree which has devolved on the plaintiff, and fraudulently obtained possession of by the defendant. The defendant having admitted the title of the plaintiff's mother, and rested his case on an alleged conveyance from her to himself, and having failed to prove this conveyance, judgment given for the claimant. *Raja Tejchund versus Jugmohun Rai*, 16th September 1808, .. .. I. 257

5. Claim by A on B and C, for possession of lands, as having been purchased from C—B pleads that they were not his to sell; and that the sale to himself from C was conditional, and did not finally take place. On proof to the contrary, and that the plea of B was collusive, [with the view apparently of avoiding the sale of his lands in satisfaction of a public demand against him,] judgment given for the claimant. *Heirs of Hedayutoollah versus Heirs of Roopchand Rai and another*, 3d December 1808, .. .. I. 262

6. Claim by A to certain villages against B and the heirs of C, adjudged in favor of A; it appearing that the claim of B and C to the lands in question rested on deeds of sale which were held to be illegal, inasmuch as they were in violation of Section 3, Regulation XXXVIII. 1793, which prohibits Europeans from holding lands without the sanction of the Governor General in Council, and were also not sufficiently distinct to give a title to the villages in question. *Messrs. Fairlie, Fergusson and Co. and another versus Mahesh Ram Chowdry*, 18th January 1819, .. .. II. 285

7. Sale by the real proprietor of certain lands upheld as valid and binding, though his name had never been recorded in the collector's books as proprietor, and though the property continued to be registered in the name of one of the seller's relations for some time after the sale. *Oomaid versus Khyrat Ali*, 7th August 1823, .. .. III. 258

8. Lands purchased by a father in the name of his son, though registered in the name of the latter, being in the possession of the former and his *bona fide* property, the son has no right to dispose of them. *Amanee Tewaree versus Rai Rughoo Buns Suhai and others*, 5th June 1824, .. .. III. 363

9. In the absence of a bill of sale for landed property and receipt for the purchase money, the Sudder Dewanny Adawlut held it necessary that the fact of the sale should be satisfactorily established; and, in the present instance, considering the proof adduced by the claimant [who was a servant of the alleged vendor, and probably in possession of his seals] to be sufficient to establish the sale, disallowed the claim. *Mirza Mahomed Ali versus Nuwab Soulut Jung and others*, 27th June 1826, .. .. IV. 168

10. Sale made by the administratrix of a real estate held to be invalid under the English law, at the suit of the son, who was declared entitled to possession on re-payment of the principal of the purchase money. *T. Hoos versus Peter Marquis*, 10th July 1827, .. .. IV. 243

11. The husband having sold a portion of land belonging to his wife, and the wife subsequently selling the same land to another individual, the first sale was upheld; though the consent of the wife is requisite to the transfer, under the Mahomedan law, such consent being presumed in this

instance. Chytun Chowdry and others *versus* Beer Singh Maltoon and others, 21st August 1827, .. .. IV. 259

12. B formally covenanted to sell an estate to A, and received part of the purchase money; but, subsequently completed a sale to C, whose name was recorded in the collector's books. A survived this 7 years: the suit of his son [brought 4 years after his death] to recover the estate, and obtain specific performance, is dismissed; no fraud on the part of C appearing, and the acquiescence of A being presumed. *Rup Chand versus* Bugwan Dutt, 4th August 1830, .. .. V. 53

13. A had managed the estate of B, a minor; and took from B [aged 15 years] a conveyance, in consideration of an alleged debt for expenditure on his account, which appeared grossly extravagant. Conveyance set aside, with reference to this, and the minority of B; without prejudice to A's recourse on B, for any claim for money expended on B's account. *Luchmun Doss versus* Rup Chand, 26th April 1831, .. .. V. 114

14. The late proprietor of an estate having sold the same without exception or reservation, his heir sues the vendee for the recovery of the compound or quantity of land immediately attached to the family dwelling of the late proprietor, on the ground that such land never constituted a part of the property transferred by the sale. The *Sudder Dewanny Adawlut* held that the proprietary right to the land was by the sale transferred to the vendee, but adjudged to the plaintiff the right of occupancy on the payment of a fair rent. *Ram Lochun Pridhan versus* Hur Chunder Chowdry, 13th August 1836, .. .. VI. 98

15. Plaintiff purchased a *putnee* from defendant: subsequently a portion was decided to be *lakhiraj*. Plaintiff sued for a corresponding reduction of the *putnee jumma*: the Court of *Sudder Dewanny Adawlut* held that, under the circumstances, the seller was not responsible for the loss sustained by the purchaser. *Muharaj Multab Chundur versus* Essanchundur Banerjee, 7th August 1844, .. .. VII. 179

16. A deed of sale of property for a specified consideration, although with the avowed object of enabling the seller to prosecute a claim at law, not invalidated thereby, nor, under certain circumstances, by the vendor not being in possession of it. *Musst. Shurfun and another versus* Sheikh Gholam Mohummud and others, 13th May 1848, .. .. VII. 495

See 'Conveyance,' No. 2.

'Sales,' Part III. Mahomedan Law.

'Attachment,' No. 2.

## SALT.

1. Section 3, Regulation IX. 1806, requires the *immediate* production to the officer of search of the *chalan* covering the salt laden on a boat, on pain of confiscation; and the Court cannot afford relief. *Ram Kishwur Kund and another versus* Superintendent of West Salt Chowkees and others, 23d February 1831, .. .. V. 90

2. Where the revenue officers illegally confiscated salt, the owner recovered as damages the prime cost, boat hire, and expected profits. *Ibid*, .. .. V. 90

3. A, the *gomashta* of a salt agent, had illegally and without official authority, attached and held possession of a salt *golah* in charge of an inferior officer, B. The *Sudder Dewanny Adawlut* affirm the *zillah* court's award of the claim for deficiency proved against A in the first instance, and ultimately against B and his surety; who were not held discharged by the tort of A. *Rughoonath Bose versus* Salt Agent of Chittagong, 10th December 1832, .. .. V. 242

See 'Security,' No. 11.

## SALTPETRE.

See 'Contract,' No. 5.

## SAYER.

See 'Assessment,' No. 18.

## SECURITY.

1. Judgment having been given for the recovery of a debt alleged to have accrued on the estate of a minor, against a person who had voluntarily become his security, and which debt the minor denies to have been due, he not having been cognisant of the suit: held, not to be sufficient to establish the debt, and consequently not to make it necessary for the minor to refund the amount, with the reservation, however, that if, on the production of accounts, it could be proved that the money was in reality advanced for the estate, the security would be entitled to credit for it. *Ochubanund Gosayn versus Hur Inder Nurain Bhoop*, 29th April 1808, .. .. I. 234

2. In an action brought to recover from the sureties of a stamp *mohurrir*, a sum of money alleged to have been embezzled by him from the proceeds of the sale of stamp paper, the plea urged by one of the defendants of fresh sureties having been obtained, subsequent to his undertaking, on account of his security being considered insufficient, does not entitle him to exemption from his original obligation, the security bond never having been cancelled. *Ranee Kishen Munee versus Collector of Dacca Jelalpoor*, 29th August 1816, .. .. II. 195

3. A security bond executed by one member of a joint undivided *Hindu* family, held to be binding on the other members; the separation pleaded to bar the claim not having been established, and deemed to have been fraudulently alleged to evade payment of the debt. A case of *arzaminee* or counter security. *Jhyntee Ram Misser and others versus Raja Mhyal Singh and another*, 8th November 1819, .. .. II. 316

4. The *Sudder Dewanny Adawlut* will not enforce payment of a sum of money promised by A to B, if the security tendered by the latter for the former, in consideration of which the promise was made, had never been acted upon, even though the promise was absolute. *Raja Jyperkas Singh versus Baboo Sahebzada Singh*, 28th September 1820, .. .. III. 51

5. The surety of a native officer employed under a collector, [stamp *darogha*,] is not liable to make good a defalcation discovered after the death of such native officer. *Collector of Moorshedabad versus Lala Sohun Lal*, 3rd January 1821, .. .. III. 65

6. Judgment against a person alleged to be the security of a native officer reversed; no investigation having been made by the court below on his denial, and the fact not admitting of satisfactory proof. *Musst. Ram Sona versus Commercial Resident of Malda*, 27th August 1822, .. .. III. 169

7. Under the general denomination of *hazir* and *malzamin*, a surety answerable for another, who contracted for service, is liable for special loss for his misconduct,—as if he should desert with his employer's goods. *Jewun Serang versus R. B. Paine*, 6th January 1830, .. .. V. 1

8. On further caution required, A became surety for B, the collector's treasurer. Subsequent to the death of A, C and others, on different occasions, became sureties. B evaded; and the deficit of his accounts was levied on C's estate. Held that A's estate was discharged, and C had no recourse on his heirs, [the clause then binding notwithstanding,] for defect of community and special covenant as to continued liability. *Raj Koomaree Beebee versus Rai Bijai Kishen*, 22nd June 1831, .. .. V. 125

9. A covenanted with Government that B [the collector's treasurer] should honestly administer his office of trust, and made himself answerable for any deficit due by B. A has no right to claim prospective discharge from his liability, unless, in claiming such discharge, he prove such misconduct of

B. Ruled by four judges, two dissenting. Prannauth Chowdry *versus* Collector of Jessore, 10th January 1833, .. .. V. 254

10. A, as caution for B, contracted a liability on a *huzoorree* farm of C's estate, including *malikana* dues of C. The collector, merely on A's application, cannot legally sequester what is due to B, to satisfy A's judgment against C. Udman Singh and others *versus* Collector of Patna, 29th July 1834, .. .. V. 362

11. The zillah judge having exempted the security of a salt *gomashteh* from liability to payment of the value of deficient salt, on the ground that the security bond specified only 'the acting *gomashteh*,' while it was not clear whether the embezzlement took place while the *gomashteh* was merely 'acting' or confirmed in his office; the Sudder Dewanny Adawlut reversed the order, holding that from the terms of the deed, the surety clearly made himself responsible for any deficiency that might occur during the period his principal was in charge of the salt stores. Salt Agent 24-Pergunnahs *versus* Moulvee Gholan Yuhna and others, 27th February 1837, .. VI. 150

12. A party who had tendered security for an officer of a collector's establishment, held responsible, under the circumstances, for the amount of an embezzlement committed by his principal, although no express order for the acceptance of the security tendered had been passed by the collector. Ram Hucee Dutt *versus* Collector of Sylhet, 2d March 1837, .. VI. 153

13. A call for further security, in consequence of that already tendered being insufficient, does not absolve the original sureties from responsibility, as long as the security bonds executed by them are not actually rejected as cancelled. Salt Agent 24-Pergunnahs *versus* Chunder Sikher Roy and others, 27th January 1840, .. .. VI. 279

See 'Auction Sales,' No. 15.

'Contracts,' Nos. 2, 5.

'Debts,' No. 11.

'Engagement,' No. 2.

'Interest,' Nos. 20, 24.

'Leases,' Nos. 12, 14, 17.

'Mortgage,' No. 9.

'Practice,' Nos. 75, 76.

## SEPARATION

See 'Arrears,' No. 1.

'Auction Sales,' No. 7.

'Assessment,' No. 8.

'Limitation,' No. 42.

'Practice,' No. 4.

'Sales,' No. 3.

'Settlement,' No. 2.

'Talooks,' Nos. 1, 2, 5, 13.

## SERBERACAR.

See 'Debts,' No. 14.

## SET OFF.

1. A case was remanded because a claim to a set off in account instead of being enquired into, had been rejected as rather the subject of a fresh suit. Ramdyal Singh *versus* Musst. Joy Konwur and others, 15th May 1847, VII. 291

## SETTLEMENT.

1. In a suit brought by the respondent, the zemindar of Khurukpoor, to recover *zemindaree-russoom* from a dependant estate, to which appel-

lant pleaded a settlement direct with Government, it appearing that the settlement with the appellant was exclusive of the *russoom* claimed by the respondent, judgment given for the respondent. *Roop Nurain Deo versus Raja Qadir Ullee*,—1809, . . . . . I. 281

2. Sale of respondent's lands, in discharge of arrears of revenue by the collector, set aside; it appearing that the respondent's estate had for several years been acknowledged by the collector and Board of Revenue, and entered in the public records as distinct from the estate in which the arrears had accrued; and that separate engagements had been taken for the public revenue, though the two estates were never separated in the mode prescribed by the Regulations. Collector of Tipperah and another *versus* Kishore Ram Doss, 5th June 1811, . . . . . I. 331

3. Claim by respondent to a *zemin-daree* in the district of Bareilly admitted on proof of right; but he not having preferred his claim against the present possessor within three years, being the period for which the first engagement was entered into, he was declared [in conformity with the provisions contained in Clause 3, Section 53, Regulation XXVII. 1803,] not entitled to regain possession till the expiration of ten years from the date of the first lease. Nuwab Mahomed Keramut Oolla Khan *versus* Desraj, 8th September 1812, . . . . . II. 3;

4. At the formation of a triennial settlement for the conquered provinces in 1210, F. S., A stood forward as proprietor of an estate; and, entering into engagements with Government, held possession for that period. B, the real proprietor, then appeared, and sued to recover profits received by A; alleging that A acted on her behalf in making engagements for the lands, and under agreement to leave B in possession of her proprietary rights and profits, but had fraudulently applied them to his own use. Claim dismissed, no written or other specific engagement between the parties being adduced by the plaintiff. Rancee Bhudoorun *versus* Heemunchul Singh, 15th May 1813, . . . . . II. 59

5. Claim to possession of a fractional portion of an undivided estate, on the grounds of a private deed of partition and distinct settlement with the sharers for the public assessment, rejected, as no actual partition of the lands had taken place in the mode prescribed by the Regulations. Collector of Tipperah *versus* Gholam Nubbee Chowdry, 24th December 1813, . . . . . II. 103

6. The civil courts are not authorized to interfere with the revenue officers, or pass orders, in a summary manner, in matters relating to the settlement of estates. Collector of Benares *versus* Sheo Nurain Singh and another, 25th September 1818, . . . . . II. 278

7. Claim to set aside a settlement made by the collector with the sanction of the Board of Revenue, rejected; it appearing that the claimant's ancestor had been in possession as farmer only, and claim not having been advanced till eight years after the conclusion of that settlement. Kumuroodeen and others *versus* Mudar Buksh and others, 24th March 1823, . . . . . III. 216

8. A settlement having been made with one individual as proprietor, held that, under Clause 8, Section 53, Regulation XXVII. 1803, a collector is not competent to substitute another individual without a judicial decree. Murlan Singh and others *versus* Rughoonauth Patuck and another, 19th July 1823, . . . . . III. 239

9. On suit by respondent to be exempted from the demand of increased assessment, claim disallowed on proof that the former collector had erroneously granted a *zemin-daree pottah* deducting an allowance for *dehyek* and *bluray*, which is the right of the *tuhseeldar* alone, and had been resumed on settlement with the proprietors; but the decree providing that no further increase should be demanded, a review was granted on the application of

the collector, and it was finally decreed that the respondent should not be exempted from increased demand, but that, if dissatisfied therewith, he might apply for a new settlement. Collector of Benares *versus* Baboo Ulrick Singh, 26th June 1824, . . . . . III. 381

10. Claim to hold an estate as zemindar, in opposition to the person with whom the settlement had been made by Government. Claim adjudged, but permission given to the opposite party to sue for the recovery of the estate under an alleged deed of gift. Ali Buksh Khan and another *versus* Kustooree Singh and others, 19th February 1825, . . . . . IV. 24

11. Held that a suit will not lie against a *malic* or *malic-mocuddum*, with whom the decennial settlement was concluded in Bhagulpoor for *chukladaree* or *chowdraee* rights, and fees. Munsumath Chowdry and others *versus* Buwani Churn and others, 20th February 1825, . . . . . IV. 126

12. Held that, since the perpetual settlement, a claim for *mocuddumae*, *chowdraee*, or *chukladaree* dues will not lie against any zemindar. Kuli-an Chowdry *versus* Raja Ikbal Ali, 19th February 1827, . . . . . IV. 215

13. At the decennial settlement, A as a farmer, contracted for the revenue of a village, of which B was recorded as the proprietor. A's representatives effected the record of their own names and the suppression of B's name, partly on a judgment in a litigation between themselves, in which the ownership was claimed. B's heirs succeeded, on special appeal to the Sudder Dewanny Adawlut, to establish their right to settle for the revenue as owners; before their case had been judicially set at rest, the village was sold for arrears of revenue due by A's representatives as owners. On suit of B's heirs, the sale is set aside, and their right to settle for the revenue adjudged: it being ruled, that the original relation of A to Government, as farmer, was really that held by his representatives, notwithstanding the irregular record of their names as owners. Collector of Tirhoot *versus* Dheraj Pandeh and others, 24th February 1831, . . . . . V. 92

14. Two brothers, at the settlement of 1197, F. S., contracted for a village in the province of Benares, under the title of *moostajirs*. At the end of 28 years, the collector resumed and re-assessed. The suit of the heirs against Government to recover the village as zemindars, and hold at the original *jumma*, dismissed, notwithstanding long hereditary possession and acts of proprietary dominion by them and their ancestors. Government *versus* Deendyal Misser and another, 23d March 1831, . . . . . V. 99

15. At the decennial settlement, several zemindars contracted, in the same engagement for distinct villages, on which parts of the gross *jumma* were assessed. Ruled that each parcel was a *huzooree mehal*; and that were it otherwise, to sell the whole for an arrear, only two-thirds of the *suddler jumma*, was excessive; and the sale reversed accordingly. [This was before Regulation XI. 1832, which provides for the sale of an estate if any part of the rent be in arrear.] Roop Chand Sahee and another *versus* Jewun Lal Rai and others, 31st January 1832, . . . . . V. 168

16. At the decennial settlement, A contracted for the revenue of a component part of his estate, in distinct *quotas*; but subsequently in 1808, under a general requisition issued under the authority of Government, signed a consolidated engagement. Held, nevertheless, that each component part constituted a *huzooree mehal*. Raja Mitterjeet Singh and others *versus* Bahoo Kulahul Singh and others, 24th April 1832, . . . . . V. 192

17. To establish a claim under Regulation I. 1793, it is incumbent on the claimant to prove his title as village zemindar of the lands. Sumeshur Pandeh and others *versus* Rajah Gopal Surn Singh, 24th Sept. 1845, . . VII. 211

See 'Leases,' No. 27.

'Rent-free Tenures,' No. 29.

'Practice,' No. 103.



SHARER.

See 'Sharer,' Part II. Hindu Law.

SHARES.

See 'Shares,' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

SHEEAS.

See 'Sheeas,' Part III. Mahomedan Law.

SHERIFF'S SALES.

See 'Attachment,' Nos. 1, 2.  
 'Rent-free Tenures,' No. 10.  
 'Talooks,' Nos. 2, 6.

SHEWAIT.

See 'Shewait,' Part II. Hindu Law.

SIR-SHIKUN.

See 'Rent-free Tenures,' No. 29.

SHEWUTTER.

See 'Shewutter,' Part II. Hindu Law.

SHIKUST PYWUST.

See 'Alluvion,' No. 4.

SHOOFA.

See 'Shoofa,' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

SILK.

See 'Contract,' Nos. 3, 4.

SISTER [FULL BLOOD.]

See 'Sister [Full blood,]' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

SISTER [HALF BLOOD.]

See 'Sister [Half blood,]' Part II. Hindu Law,  
 „ Part III. Mahomedan Law.

## SISTER'S SON.

See 'Sister's Son,' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

## SISTER'S SON'S WIDOW.

See 'Sister's Son's Widow,' Part II. Hindu Law.

## SLAVE.

See 'Slave,' Part III. Mahomedan Law.

## SLAVERY.

Notc.—The cognizance of cases of slavery by the Company's courts having been abolished by Act V. 1813, the whole of the reported cases on this subject are here brought under one head.

1. The marriage of a Mahomedan with his slave girl is of no effect in law. *Gholam Hossein Ah versus Zeinub Beebee*, 20th July 1801, . . I. 48
2. A dancing girl having left her mistress, by whom she had been purchased while a child and educated; and having discontinued the payment of a monthly allowance to which she had bound herself by a written obligation, on suit by the mistress to enforce the obligation, or recover the girl, claim disallowed; the girl not being legally a slave, and the mistress not having proved that what had already been received was insufficient to cover the expense of her education. *Musst. Chutroo versus Musst. Jussa*, 28th March 1822, . . . . . III. 141
3. A legal right to the service of another person only can arise to a *Moslim*, when the party claimed as his slave, or his progenitor, was an infidel captive to a *Moslim* force, prevailing in holy war. *Sheikh Khawaj and others versus Mahomed Sabir*, 28th August 1830, . . . . . V. 59
4. A claims the descendants of B, C and D as his hereditary slaves. The zillah and provincial courts adjudge the claim, inferring slavery from continuous service rendered, other circumstances, and a written acknowledgment of B, C and D. On special appeal, the decisions of the lower courts are reversed by one judge, because he distrusted the evidence offered to shew services rendered and the alleged deed; and by the other for this, that it did not follow because the defendants had rendered services, as well as paid for lands held of plaintiff that they were his slaves, for claim to rent, including service, ceased on abdication of land. *Kewul Ram Deo and others versus Goluc Nurayn Rai*, 5th May 1832, . . . . . V. 243
5. Special appeal admitted in case of alleged slavery, where the facts found did not seem to justify the inference of legal slavery; and exaction of security from appellant waived on authority of a precedent. Judgment of the zillah court, affirmed by the provincial court, reversed *in toto* in regard to all the defendants, though all did not appeal. *Ibid*, . . . . . V. 243
6. A claimed as his hereditary slaves B and his family, alleging that their forefather (C) had been one of the slaves of his family, and he and his descendants, including B and the other defendants, had continuously rendered service, and received support in lodging and small assignments of land. A could produce no title to prove the hereditary servitude of B. Held that, if adduced, the Court could not, on the facts charged, equitably adjudge into servitude the existing, and, therefore, all future descendants

of C. Kishen Chundra Dutt Chowdry *versus* Bir Hal Bhundari and others,  
24th November 1832, .. .. V. 248

7. Under the Hindu law, a slave who is maintained on consideration  
of servitude, is entitled to release on relinquishment of the maintenance.  
Kirtee Nuran Deo and others *versus* Gowree Sunker Dutt, 7th December  
1835, .. .. VI. 45

# SONS.

See 'Conveyance,' No. 4.

'Sons,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

# SOOLEHNAMAH

See 'Compromise,' No. 3.

'Deeds,' No. 18.

# SOONEES.

See 'Soonees,' Part III. Mahomedan Law.

# SOUDAYCIA.

See 'Soudaycia,' Part II. Hindu Law.

# SPECIAL APPEALS.

1. Certificates admitting special appeals requiring amendment to be  
amended by the deciding judges. Hurree Mohun Dass and others *versus*  
Pran Kishen Rae, 18th August, 1847, .. .. VII. 381

2. A judgment of the lower court founded on four distinct reasons, the  
last based on the facts of the case, will stand in special appeal irrespective  
of any opinion formed as to the first three reasons, such reasons not being  
in themselves sufficient to over-rule the judgment. Fukeeroodeen Mohun-  
mud *versus* Bugwuttee Dassen and others, 1st September 1847, .. VII. 388

See 'Appeals,' Nos. 3, 4, 10, 13, 18, 23, 25, 26, 27, 28, 30, 32, 33, 34, 35.

# SPECIAL COMMISSION.

See 'Rent-free Tenures,' No. 31.

# STAMPT PAPER.

1. A document stamped under the provisions of Clause 5, Section 14,  
Regulation X. 1829, was admitted; it being presumed that the requisite  
forms had been observed in obtaining the stamp. Thootimjah and another  
*versus* Baboo Keerut Singh and others, 19th February 1835,.. .. VI. 21

2. A claim for arrears of rent, on a special agreement, executed on a  
stamp of inadequate value, dismissed. Mr. Elliot Macnaghten *versus* Jug-  
gomohun Biswas and another, 24th August 1840,.. .. VI. 303

3. Documents executed on plain paper under Section 79 of the Act for  
the relief of insolvent debtors (9th George 4, Chapter 73,) are admissible as  
evidence in the Company's courts, without being stamped. Henry Cowie  
*versus* Rambuksh Mehta and another, 15th September 1842,.. .. VII. 118

See 'Bill of Exchange,' No. 4.

'Bond,' No. 3.

'Debt,' No. 3.

STEP MOTHER.

See 'Step Mother,' Part II. Hindu Law.

STIPEND.

See 'Annuity,' No. 3.

STRIDHUN.

See 'Stridhun,' Part II. Hindu Law.

SUCCESSION.

See 'Succession,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

SUJADEH NUSHEEN.

See 'Sujadeh Nusheen,' Part III. Mahomedan Law.

SULAMEE.

See 'Assessment,' No. 6.

SUNNUD.

See 'Rent-free Tenures,' Nos. 9, 15, 22, 23.

SUMMARY SUITS.

1. Held that a *putneedar* can be summarily sued for arrears of rent.  
 Rajah Bidanund Singh *versus* Lutchee Dutt Paurey and others, 30th May  
 1844. .. .. . VII. 171

SUMMARY APPEALS.

See 'Appeals,' Nos. 2, 5, 6, 15, 17.

SUNYASI.

See 'Sunnyasi,' Part II. Hindu Law.

SUPERINTENDENT.

See 'Superintendent,' Part II. Hindu Law. ●

„ Part III. Mahomedan Law.

SUPPLEMENTARY PLAINT.

See 'Practice,' No. 79.

'Moonsiffs,' No. 1.

SUPREME COURT.

1. Held that a zillah court was incompetent to pronounce an opinion on the power of the Supreme Court; and that by Section 16, Regulation III. 1793, it had no jurisdiction in a claim for money proved to have been paid

into the Supreme Court by order of the Supreme Court. Richard Vaughan and another *versus* Nicholas Demetrius Elias and others, 18th January 1844, VII. 150

2. The Company's courts have no power to interpret the meaning, or interfere with the execution of any decree passed by the Supreme Court. Beydnath Ghosal and another *versus* Alexander Deverell, 26th September 1844, .. .. VII. 183

See 'Advocate General,' Nos. 2, 3.

'Attachment,' Nos. 1, 2.

'Civil Courts,' No. 2.

'Debts,' No. 8.

'Jurisdiction,' Nos. 5, 6, 8, 10, 16.

'Rent-free Tenures,' No. 10.

'Talooks,' Nos. 2, 6, 11.

'Limitation,' No. 4.

'Practice,' No. 102.

### SURETY.

1. The holder of a decree being put in possession of a property on security, the surety on refunding, after reversal of the decree, mesne profits to the successful appellant, is exonerated from the demand of others entitled to share in them, but not parties to the suit. Musst. Bibi Inamun and others *versus* Musst. Bibi Mujoo and another, 14th June 1847, .. .. VII. 341

See 'Security,' *passim*.

### TAIDAD.

See 'Rent-free Tenures,' No. 18.

### TALOOKS.

1. The respondent appearing to have a hereditary right in his *talook*, which, under the provisions of Regulation VIII. 1793, entitled him to have it separated from the zemindaree of the appellants, he was advised to apply to the collector of the district for separation, in order that the *jumma* might be adjusted for future years according to the Regulations. Bhubinder Nuran and another *versus* Bishen Nath Rai, 14th August 1805, .. .. I. 100

2. The plaintiff claimed a *talook* under a deed of gift from his father, the zemindar, made prior to the sale of the zemindaree by the sheriff. Claim upheld; and plaintiff appearing entitled to have the *talook* separated from the zemindaree, and to hold it independant of the zemindar, under the provisions of Regulation VIII. 1793, he was instructed to take measures for its separation. Anund Chund Rai *versus* Kishen Mohun Banerjee and others, 4th December 1805, .. .. I. 11.

3. The claim of appellant to the *talookdaree* right of certain lands in the zemindaree of the respondents not proved, and dismissed. But on proof of right to hold the lands as a *mouroosy ijareh*, or hereditary leasehold, at the customary rent of the *pergunnah*, judgment given accordingly. Dya Ram *versus* Bhubinder Nuran and another, 9th June 1806, .. .. I. 139

4. A *talook* and a *mouroosy ijareh*, though both hereditary, differ in some important points. The former denomination includes tenures of various descriptions, some of which vest the *talookdar* with the full right in the property, and entitle him, under the rules of the permanent settlement of the land revenue, to become independant of the zemindar, through whom he formerly paid his rent, and to pay his fixed assessment direct to Government. Other *talooks* are dependant on the zemindaree from the lands of which they are formed, but secured, by special provisions, from undue exactions of rent. A *pottah*, or lease for a *mouroosy ijareh*, does not specifically convey more than a hereditary right of occupancy. If it be not

*istumraree*, or entitling the tenant to hold at a fixed rent, the amount of the annual rent payable to the zemindar is variable; and, when not settled by mutual agreement, is determinable only by the indefinite standard of the 'customary rate of the *pergunnah*,'—that is the rent payable by similar tenures in the same *pergunnah*. Ibid, . . . . . I. Note. 140

5. The lands of a *talookdar* appearing separable from the zemindaree, judgment given for their separation, and for the balance of arrears of rent to be settled according to the rate of revenue, which should then be assessed on them. Birj Kishwur and others *versus* Sumbhoo Chund Rai, 13th June 1806, . . . . . I. 141

6. The purchase of a *talook*, made while the zemindaree was under attachment by the Sheriff for a public sale, under the orders of the Supreme Court, declared invalid against the purchaser at the public sale, but obligatory on the former zemindar, and his heir, in the event of the public sale being set aside. Munroop Rai *versus* Ramjee Banoja and another, 22d December 1806, . . . . . I. 172

Petumber Bhuttacharj *versus* Ramjee Banoja, 3d July 1807, . . . . . I. 195

7. A *pottah* for the sale of a dependant *talook* at a fixed rent in perpetuity, invalid under Section 2, Regulation XLIV. 1793, [rescinded by Section 2, Regulation V. 1812, but re-enacted for the ceded and conquered provinces by Regulation XIV. 1812.] with respect to the fixed rent, but valid for the sale. Munroop Rai *versus* Ramjee Banoja and another, 22d December 1806, . . . . . I. 172

Petumber Bhuttacharj *versus* Ramjee Banoja, 3d July 1807, . . . . . I. 195

Gopce Mohun Thakoor and another *versus* Ram Tunnoo Bose, 30th June 1812, . . . . . II. 19

8. A grant made to a person under the peculiar title of *birt ijareh*, construed to convey a tenure inheritable by the heir of the grantee, and entitling him to hold the lands at the *istumraree jumma* specified in the grant. Collector of Dmagepoor and another *versus* Gor Chand Surma, 23d January 1807, . . . . . I. 176

9. The private sale of a *talook* by the late zemindar adjudged invalid, [though the lands had been separated and assessed by the collector,] as the sanction of the Board, which the Regulations require in such cases, had not been obtained; and the Board had re-annexed the lands to the *pergunnah*, and included them in the public sale. Judgment for the auction purchaser. Sham Rai and another *versus* Collector of Jessore and another, 5th July 1808, . . . . . I. 239

10. Claim to hold a *talook* at a fixed rent in a zemindaree purchased by the defendant, adjudged in favor of the plaintiff on proof of an *istumraree* tenure, in conformity to Section 49, Regulation VIII. 1793, by which dependant landholders, *istumrardars*, or tenants at a fixed rent, holding their tenures from zemindars, or superior landholders, who have already 'held their land at a fixed rent for more than 12 years,' were declared 'not liable to be assessed with any increase either by the officers of Government, or by the zemindar, or other actual proprietor of the land.' Chintamunee Mustofee *versus* Durup Nurain Rai and others, 16th July 1810, . . . . . I. 302

11. Claim by respondent for possession of a *muzkooree*, or dependant *talook*, at a fixed rent, under a deed of sale from a zemindar, whose estate had been sold under the authority of the Supreme Court, and purchased by the appellants who had dispossessed him. Judgment in favor of respondent for possession, and *mesue profits* during the period of dispossession to be adjusted under the rules of Section 8, Regulation V. 1812. Gopce Mohun Thakoor and another *versus* Ram Tunnoo Bose, 30th June 1812, . . . . . II. 19

12. Claim by defendant to hold a dependant *talook* at a fixed rent, under a *pottah* granted by the former zemindar in the zemindaree of the plain-

tiff, who purchased the zemindaree partly by private sale, and partly at a public sale for arrears of public revenue. Determined that the defendant was entitled to hold as a dependant *talookdar*; that his engagement, as far as regards the fixed rent of that part of his *talook* which was included in the public purchase of the plaintiff, was null and void, and that he should pay rent according to the customary rate of the *pergunnah*; but the terms of the engagement to hold good for the period of ten years as regards that part of the *talook* included in the private purchase, after which he was to pay at the *pergunnah* rates. *Radha Mohun Ghose versus Bhurut Chund Ghose*, 1st September 1813, .. .. II. 80

13. A *talook*, originally granted as a dependant tenure, afterwards made independant by a *kharijnameh*, but not actually separated before a public sale of the zemindaree for arrears of revenue, was included in the sale, under the provisions of Section 14, Regulation I. 1801. But the auction purchaser having subsequently acknowledged the right of the *talookdar* to hold the *talook* distinct from his zemindaree, the separation was adjudged, notwithstanding the objections of a second purchaser of the zemindaree by private sale from the first purchaser. *Muree Nurain Rai versus Rajinder Rai*, 7th December 1813, .. .. II. 97

14. A *talook* being separated from a zemindaree by the consent of the parties concerned, and assessed by the collector at the rate of *jumma* to which it was subject previous to the separation, without reference to its actual produce: such assessment declared null and void, and another directed to be made according to Section 10, Regulation I. 1793, which prescribes that when a portion of an estate shall be transferred by private sale, gift, or otherwise, the assessment on the portion so transferred shall be fixed at an amount which shall bear the same proportion to its actual produce, as the assessment upon the whole estate may bear to the whole actual produce. *Baboo Gopee Mohun versus Ishry Churn and others*, 7th December 1813, .. .. II. 100

15. The *mocondumee* tenure in Bhaugulpoor adjudged to be separable, as a proprietary estate, [under Sections 4 and 5, Regulation VIII. 1793.] from the *chowdraee* to which it had heretofore been annexed. *Runglal Chowdry versus Ramanath Doss*, 24th June 1814, .. .. II. 114

16. The assessment imposed at the time of the decennial settlement on a *talook jungleboory* tenure, is liable to be enhanced according to the *pergunnah* rates, on a measurement of the lands brought into cultivation. *Khaja Aratoon and another versus Doorga Pershad Bhuttacharj and others*, 18th July 1820, .. .. III. 34

17. A dependant *talook* for which a *sunnud* had been granted by the former proprietor to hold at a fixed rent, but which was granted within 12 years before the decennial settlement, held liable to increase of assessment by the present proprietor, though not an auction purchaser. *Khajeh Nekoo Marcar versus Ram Lochun Ghose*, 20th March 1823, .. .. III. 221

18. The plaintiff sued to have two *turruffs* re-annexed to his estate, on the plea that they were dependant; claim rejected, on proof that the *turruffs* had been separated before the plaintiff's purchase of the estate, and distinctly assessed by the collector, and assessment confirmed by Government. *Collector of Rajeshahye versus Rughoonath Nundee and another*, 16th August 1824, .. .. III. 400

19. Before and after the decennial settlement, several *talooks* were registered in the names of several persons as components of a *mehal*, with specification of areas and *quotas*, completing general assessment thereon. Each *talook* was considered as *huzooree*. In 1794, A's name was omitted in a revised list; and he after four years petitioned the revenue authorities against this. In 1807, he sued B for right to hold as *huzooree*, and to recover lands of the *talook*, from which [a trifle excepted] he alleged eject-

ment in 1807. He pleaded that awaiting the decision of the Board, on his protest, by order of the collector up to 1807 he paid revenue to B as his under-tenant. Claim dismissed with reference to the *laches* of A, and defect of proof of ejection. *Malik Yacoob and others versus Jug Jewun Dhur and others*, 3d April 1832, .. .. V. 179

20. A, as zemindar, exacted rent from B in excess of the sum which the latter contended was the fixed and unenhanceable rent of his *talook*. B recovers excess in a suit for the same, in which his right to hold at a fixed rent, though not the principal demand, is incidentally adjudged. *Prasana Nath Rai versus Rance Kishen Muncie*, 12th March 1833, .. V. 274

21. The plaintiff, a *putneedar*, sued to obtain an assessment on certain lands held at fixed rent under an alleged *malgoozaree ayna* grant: claim dismissed on proof that the grant was dated previous to the decennial settlement, and that the *ayna* lands had been registered in the collector's office as a separate *mehal*, prior to the date of the acquisition of the estate, at public sale, by the zemindar from whom the plaintiff purchased his *putnee* tenure. *Fukcer Chand Sem versus Pran Kishen Muldar and another*, 20th July 1836, .. .. VI. 86

## TENAKUZ.

See 'Tenakuz,' Part III. Mahomedan Law.

## TENDER.

See 'Mortgage,' Nos. 5, 11, 30, 34, 39.

## THIRD PARTY.

1. Judgment for mesne profits against a third party, not a party to the suit, over-ruled. *Gopce Mohun Thakoor and another versus Ram Tunnoo Bose*, 30th June 1812, .. .. 19

2. In a suit brought by one person against another to recover certain lands, it is only necessary to enquire into the title of the claimant: should it incidentally appear that neither party has a right to the property, still the rightful owner must institute a regular suit to recover it. *Raja Chutter Singh versus Shah Mahomed Ali*, 5th April 1816, .. .. 11. 178

3. A claim to set aside a deed of sale having been dismissed, it was declared that the right of a third party was not affected by the decree confirming the sale. *Munsa Ram versus Dhun Singh and others*, 21st March 1825, .. .. IV. 38

4. Judgment creditors allowed to appeal and defend appeals from decrees, by which the solvency of their debtors was affected. *Imdad Ali versus Kadir Buksh and others*, 24th April 1833, .. .. V. 296

*Aiman Beebee versus Ibrahim Khan*, 9th May 1833, .. .. V. 304

5. A collector's decree, on a summary suit for arrears of rent, forms no ground of action against a third party. *Rance Kunul Komaree versus Kungal Chunder Moojoomdar*, 5th December 1844, .. .. VII. 186

See 'Actions,' Nos. 9, 18, 19.

'Agents,' No. 13.

'Decrees,' Nos. 3, 5.

'Execution of Decrees,' No. 5.

'Mortgage,' No. 3.

'Practice,' Nos. 9, 10, 11, 19.



**TIMBER.**

See 'Bunker,' No. 1.  
'Contract,' No. 2.

**TIPPERA.**

See 'Usage,' No. 4.  
'Ancestral Property,' Nos. 8, 11, Part II. Hindu Law.

**TOMB.**

See 'Tomb,' Part III. Mahomedan Law.

**TONSURE.**

See 'Tonsure,' Part II. Hindu Law.

**TRANSLATION.**

See 'Auction Sale,' No. 7.

**TREASURER.**

See 'Security,' Nos. 8, 9.

**TRIBUTARY MEHALS OF CUTTACK.**

See 'Usage,' Nos. 8, 11, Part II. Hindu Law.

**TRUSTEE.**

See 'Trustee,' Part II. Hindu Law.  
„ Part III. Mahomedan Law.

**TUHSEELDAR.**

See 'Debts,' No. 7.  
'Fine,' No. 4.

**TULJEEH.**

See 'Tuljeeh,' Part III. Mahomedan Law.

**TUMLEEK.**

See 'Tumleek,' Part III. Mahomedan Law.

**UMANUTNAMEH.**

See 'Decds,' No. 6.

**UNCLE.**

See 'Uncle,' Part II. Hindu Law.

# UNDEFINED SHARES.

See 'Undefined Shares,' Part II. Hindu Law.  
 „ Part III. Mahomedan Law.

# UNDIVIDED PROPERTY.

See 'Auction Sales,' No. 18.  
 'Alienation,' Nos. 1, 4, 14, 24, 25, 33. } Part II. Hindu Law.  
 'Ancestral Property,' No. 20.

# UNION OF ESTATES.

See 'Auction Sales,' No. 23.

# UNSOUND MIND.

See 'Conveyance,' No. 3.  
 'Deeds,' No. 11.  
 'Review,' No. 1.  
 'Parentage,' No. 2, Part III. Mahomedan Law.

# USAGE.

1. The proprietary dues levied on iron ore manufactured, does not necessarily belong to the proprietor of the soil, if it should have been the usage to consider such property as distinct from the soil. *Gooroo Pershad Bose and others versus Bishmoo Churn Heyra*, 31st July 1811, . . . I. 337
2. An action by the zemindar of Chota Nagpore for the resumption of a *jugheer* tenure was decided in his favor, on the ground of local usage. *Thakorayn Roop Nath Koor versus Raja Jugurnath Sahce Deo*, 3d December 1836, . . . VI. 133
3. According to family usage, the raja of Pachete [within the jurisdiction of the Governor General's agent for the division of Hazareebagh] has the power of cancelling grants made by his predecessors in the raj. *Beebee Punehum Koonarce versus Raja Gurumayn Deo*, 22d February 1837, . . . VI. 140
4. Held that it is not competent to the reigning raja of Tippera to alienate the lands of the zemindaree of the raj, for a period extending beyond the term of his own life. *Raja Kishen Kishore Mane versus Musst. Hurce Mala*, 28th March 1837, . . . VI. 155
5. In the case of an estate in Manbhoom, in the jurisdiction of the Governor General's agent at Hazareebagh, it was held that the succession is vested in the eldest son of the deceased raja born of any of his wives, in preference to the eldest son of his *paal*, or first rance. *Raja Rughoonath Singh versus Raja Hurrechur Singh*, 8th June 1843, . . . VII. 126
6. In a suit for succession to a moiety of the estate of the raja of of Tirhoot, the claim was dismissed on the ground that the succession devolved upon the defendant in virtue of a deed executed in his favor by the late incumbent; such possession being in conformity with the long established usage of the family, in which the title and estate had uniformly devolved entire for many generations. *Muha Raj Kowur Basdeo Singh versus Muha Raja Roodur Singh Buhadur*, 27th February 1846, . . . VII. 228

See 'Alluvion,' No. 4.  
 'Ancestral Property,' Nos. 3, 6, 8, 11, 12, 13, 15, 16. } Part II. Hindu  
 'Pilgrims,' No. 2. } Law.  
 'Usage,' *passim*.

USBAH.

See 'Ushah,' Part III. Mahomedan Law.

USUFRUCT.

See 'Interest,' Nos. 3, 4, 6, 7, 14.

'Mortgage,' Nos. 38, 45, 46.

VALUATION OF PROPERTY.

1. Held that the valuation of a suit to recover possession of a *mela*, or fair, at 18 years' produce is unnecessary. The plaintiff may lay his action at the estimated value of the interest claimed. Sheelmath Dutt and others *versus* Heeralal Birjasee and others, 21st January 1846, .. .. VII. 225

2. An objection by defendant to the valuation of the property sued for cannot be entertained by the court of original jurisdiction, unless pleaded in answer to the plaint; or by the appellate court, unless so pleaded; and the order thereon, if against the defendant, appealed from either summarily or regularly. Syud Shah Mohummud Yasin *versus* Syud Enyet Hussein and others, 17th December 1846, .. .. VII. 284

3. Objections made in the lower court by the defendant to the valuation of the property sued for, cannot be tried by the appellate court unless a summary or regular appeal be preferred on that particular point. Bechoo Opadhma and another *versus* Shah Mohummudee and others, 2d November 1846, .. .. VII. 286

See 'Practice,' Nos. 59, 78, 86, 90.

VERBAL.

See 'Bequest,' Nos. 1, 2.

'Dower,' No. 27.

'Endowments,' No. 16.

'Marriage,' Nos. 3, 5.

'Evidence,' No. 3, Part II. Hindu Law.

} Part III. Mahomedan Law.

VICINAGE.

See 'Pre-emption,' No. 2, Part II. Hindu Law.

„ Nos. 1, 3, 6, Part III. Mahomedan Law.

WARDS, COURT OF.

1. The Court of Wards, on the report of its agent (the managing collector) caused part of the ward's estate to be sold by public auction, to levy means to satisfy judgment and other debts. The Sudder Dewanny Adawlut ruled that this was within the discretion of the Court of Wards, under Regulation X. 1793, and that the sale could not be disturbed on grounds applicable to other public sales. Nund Coomar Ray and Government *versus* the Widows of Raja Sibnath Rai, 6th September 1831, .. V. 233

2. A, a female, succeeded to a share of a joint estate, managed by the Court of Wards, before and after her succession. She alienated her share to B, and repelled his action to enforce the sale by pleading her incompetency to alienate without leave from the Court of Wards. Plea disallowed; because no enquiry had been made under Regulation X. 1793, by the revenue authorities, as to her qualification or disqualification. Jan Kentoona *versus* Khajeh Ahmoolla, 4th December 1832, .. V. 240

3. Hence it may be inferred, that the alienation by a female ward, whom the Governor General, under Section 2, Regulation X. 1793, may declare competent or qualified, is valid, and *vice versa*. Ibid., . . V. 240

## WASILAAT.

See 'Mesne Profits,' *passim*.

## WIDOWS.

1. According to the Portuguese law of inheritance, one moiety of the estate of the husband devolves on his death on his widow, and the other moiety on his next of kin. Joanna Fernandez *versus* Domingo DeSilva and another, 12th February 1817, . . . . . II. 227

2. By the French law, where the widow has been in a state of community with her intestate husband, she is entitled to a moiety, and his collateral kin to a moiety of his personal estate. Mr. Durand *versus* Julian Bolard and others, 15th February 1832, . . . . . V. 176

3. In the case of an Armenian dying intestate, leaving a childless widow and a whole brother, it was held by the Sudder Dewanny Adawlut, after consulting various Armenian authorities, that the widow was entitled to one-sixth of her husband's estate. Avietic Ter Stephanos *versus* Anna Bibi, 20th August 1838, . . . . . VI. 238

See 'Widows,' Part II. Hindu Law.

„ Part III. Mahomedan Law.

## WILL.

See 'Bequests,' Nos. 3, 4.

'Fraud,' Nos. 1, 3.

'Bequests,' Nos. 1, 3, Part II. Hindu Law.

„ Nos. 6, 7, 8, 9, 10, Part III. Mahomedan Law.

'Practice,' No. 73.

## WITNESS.

See 'Practice' No. 124.

'Evidence,' No. 2.

'Fine,' No. 6.

'Evidence,' No. 3, Part II. Hindu Law.

„ Nos. 3, 6, Part III. Mahomedan Law.

## WIVES.

See 'Widows,' *passim*.

„ „ Part II. Hindu Law.

„ „ Part III. Mahomedan Law.

## WUQF.

See 'Wuqf,' Part III. Mahomedan Law.

## ZEMINDAREE POTTAIL.

See 'Assessment,' No. 16.

## ZEMINDAREE RUSSOOM.

See 'Settlement,' No. 1.

## ZOO-IL-ERHAM.

See 'Zoo-il-erham,' Part III. Mahomedan Law.

## PART II.

# HINDU LAW.

### ABSENTEE.

1. According to Hindu law, 12 years is to be allowed for the appearance of a missing person, after which his death will be presumed. *Musst. Bva-buttee versus Rajkishen Sahoo*, 25th April 1820, . . . . . III. 28

### ACQUISITIONS.

1. In a zemindaree acquired by one of four [Hindu] brothers, either with aid from joint funds or with personal aid from the brothers, 2-5ths declared to be the share of the acquirer, and 1-5th the share of each of the brothers. Division of the zemindaree made accordingly among the heirs and descendants of the brothers. *Guda Dhur Serma and others versus Ajood-heerum Chowdree*, 30th October 1794, . . . . . I. 6
2. A member of a Hindu family, among whom there had been no formal articles of separation, and who, as well as his father, had messed separately from the rest, and had no share in their profits and loss in trade, though he had occasionally been employed by them and had received supplies for his private expenses, is presumed separate from family partnership, and shall not be admitted to claim a share of acquisitions made by others of the family. *Raj Kishore Rai and others versus Widow of Santoo Doss*, 26th August 1796, . . . . . I. 13
3. If property be acquired without the aid of joint funds, by the exclusive industry of one member of an undivided Hindu family, others of the family, though they were living at the time conjointly with him and still do so, have no title to share in his acquisitions. *Khodce Ram Serma and another versus Terlochan*, 4th September 1801. [See No. 12], . . . . . I. 35
4. The mere circumstance of messing together is in no law conclusive proof of co-parcenary in property. *Ibid.*, . . . . . I. 35
5. Plaintiff and defendant were till lately in family partnership,—defendant managing the zemindaree, and plaintiff receiving his expenses. The family estate consisted originally of 12 *monzahs*, and the manager acquired 17 more for 3,200 rupees, borrowed for the purpose, and afterwards took out a zemindaree *pottah* for the whole together. Held, in conformity with the opinion of the *pundits*, that plaintiff at the time of separation was entitled to one-half of the whole, for the acquisition by the managing partner is for common benefit, and the money borrowed for the purpose is payable by each sharer in proportion. *Sheo Pershad Singh versus Kulunder Singh*, 5th September 1803, . . . . . I. 76
6. Claim by appellant to participate in certain property acquired by trade, while appellant and respondents were in family partnership with their late father. Judgment against the appellant, the property having been acquired by one of the respondents exclusively, without aid from any joint stock of the family. *Soobuns Lal versus Hurbuns Lal and Rooder Ram*, 17th June 1805. [See Nos. 7, 13], . . . . . I. 91
7. One of four [Hindu] brothers, while living in family partnership with the rest, obtaining a considerable grant of land, is held to be exclusively entitled to it by Hindu law; it not being shewn that he obtained it by means

- of aid from any joint funds of the family. *Pertaub Buhadoor Singh and others versus Telukdharee Singh*, 9th March 1807. [See Nos. 6 and 13], .. .. . I. 178
8. Claim by a son on his father for a balance of cash. On proof that the money was acquired by the separate and exclusive industry of the son, and that the father therefore was not entitled to any part of it, judgment given for the amount. *Birj Ruttan Doss versus Birj Pal Doss*, 20th April 1807, .. .. . I. 182
9. Two Hindu brothers, living together without any paternal estate, purchase sundry lands and hold them for several years in common tenancy. Claim by the younger against the elder for a moiety of the lands. It appearing that the defendant chiefly contributed the capital of the purchase money, both giving their labor to the improvement of it, one-third of the joint estate was adjudged to the plaintiff. *Khoshal Chukerbutty versus Radhanath Chukerbutty*, 11th June 1811, .. .. . I. 335
10. A and B are brothers. A purchases an estate in the name of C, his nephew and son of B. It is proved that A and B had no property in common, and that the whole of the purchase money was defrayed by A, who had been in possession of the estate for seven years after the purchase, and had enjoyed all the profits arising therefrom. The presumption is that he purchased it solely on his own account, and not for his nephew. Decision in favor of A accordingly. *Sheo Ram Ghose versus Data Ram Ghose*, 13th April 1813, .. .. . II. 53
11. Plaintiff sued his brother and nephew to recover a moiety of an estate, on the plea that it had been acquired while the family was undivided. That plea being established by evidence, judgment was given for the plaintiff. *Jadoo Ram Doss versus Ohye Ram Doss*, 28th August 1813, .. II. 77
12. According to the Hindu law current in Bengal, if property be acquired without aid from joint funds, by the exclusive industry of one member of an undivided Hindu family, others of the family, though they were at the time living in co-parcenary with him, have no right to participate in the acquisition. *Kalee Pershad Rai and others versus Digumbar Rai*, 28th May 1817. [See No. 3], .. .. . II. 237
13. Lands acquired by four undivided Hindu brothers will, after their death, be made into four shares, and one share given to the representatives of each brother; unless it can be proved there was an inequality in the degree of labor or funds supplied by one or more of them in making the acquisition. *Musst. Doorputtee versus Huradlum Sircar and others*, 20th February 1821, .. .. . III. 71
14. Lands purchased by the father in the name of his son, though registered in the name of the latter, being in the possession of the former and *bona fide* his property, the son has no right to dispose of them. *Amanee Tewaree versus Rai Rughoobunns Suhae and others*, 5th June 1824, .. III. 363
15. Claim to share in certain landed property dismissed, as though the parties were descended from a common ancestor, it was probable the property had been alienated from the family, and re-acquired by a different branch; and it not appearing that there was any trace of proprietary right or possession, on part of the claimants since the Company's accession to the *Dewanee*. *Birja Sahoe and others versus Roopun Sahoe and others*, 16th January 1826, .. .. . IV. 99
16. In the case of an undivided Hindu family, their acquisitions will be presumed to be joint, till proved otherwise; the *onus probandi* resting with the party claiming exclusive right. *Gour Chunder Rai and others versus Hurresh Chunder Rai and others*, 20th June 1826, .. .. . IV. 162
17. In a case which arose in Rainghur, the Court recognised the doctrine laid down by two precedents [Nos. 6 and 7:] but dismissed the claim

of a member of an undivided Hindu family against his co-parceners, on defect of proof that the estate claimed had, as charged, been acquired solely by him, without aid of common stock or labor. *Koul Nath Singh versus Jugroop Singh and others*, 20th February 1830. [See Nos. 6 and 7.] • V. 12

18. On the death of A, a zemindar of north Purneah, his eldest son B took the whole estate, real and personal. The younger son C [who was then a minor] sued to recover a moiety of the patrimony as also accessions made by B. The claim of C was awarded. B was treated as having acquired on behalf of both brothers, and by credit or means derived from the joint undivided estate on which he had wrongfully entered as sole successor: the Court considered him as virtually trustee for his younger brother as to half, and provided that allowance should be made to him for the purchase money in the account for which he was liable. *Raja Baidyanund Singh versus Rudranund Singh*, 25th April 1832, • V. 198

19. On the death of A, a Hindu of Behar, the name of B (his widow) was substituted in regard to lands of which he was recorded as owner. At the end of ten years C and D, heirs in the male line of a brother of A's great grand-father, sue to recover the whole, and succeed; the widow being entitled to maintenance only, on proof that they and their ancestor had enjoyed a portion for support, and on presumption that the accessions were acquired out of profits of what was ancestral and co-parcenary on behalf of all the kinsmen. *Musst. Ghansham Koomaree versus Govind Singh and others*, 10th May 1832, • V. 202

20. Where property was acquired by several joint brothers, who contributed (unequally) means and labor in the acquisition, the Sudder Dewanny Adawlut, without reference to its *pundit*, adjudged that by usage and Hindu law, the brother who contributed most to the acquisition should receive a larger share. *Kripa Sindhu Patjoshi and others versus Kanhaya Acharya and others*, 31st December 1833, • V. 335

21. The grandsons of the original acquirer of certain property, sued, during his lifetime, their paternal uncle for their shares, under the Hindu law of inheritance, of the estate acquired by their common ancestor. Judgment in favor of the plaintiffs, on proof that the original acquirer had relinquished his title to the property in favor of his sons. *Byram Singh and another versus Seeb Suhac Singh and others*, 5th April 1836, • VI. 65

## ACTIONS.

See 'Actions,' Nos. 11, 16, Part I. General.

## ADOPTION.

1. A zemindar of *Tirhoot* adopted one of his kindred by a verbal declaration in the presence of witnesses, but without any religious rite or ceremony; and the person so adopted was acknowledged, after the zemindar's death, as his heir, at the obsequies. Held, that this adoption is good; and that the son adopted [*Kritrima* or *Kurtapootr*], takes the inheritance exclusively, property, real and personal, hereditary and acquired. *Kullian Singh versus Kirpa Singh and others*, 23d April 1795, • I. 9

2. A son adopted by the *Dattaca* form of adoption which is in use in *Bengal*, into another family, is thereby excluded from inheritance in his own family. *Sri Nath Serma versus Radha Kunt*, 24th November 1796, • I. 15  
*Dutt Nuran Singh versus Ajeet Singh*, 14th February 1799, • I. 20

3. One adopted by the *Kritrima* form, which is in use in *Behar*, *Tirhoot*, &c., takes the inheritance both in his own family and in that of his

adoptive father. *Sri Nath Serina versus Radha Kunt*, 24th November 1796, .. .. I. Note. 15

*Musst. Depoo versus Gowree Shunker*, 23d February 1824, .. .. III. 307

4. A Hindu zemindar in *Bengal*, at his demise without issue, left two widows, the adopted son of his brother, and sons of his half brother. The first widow, and then the son adopted by her under due authority died. The other widow [who states that she had adopted a son, after the death of the other, under due authority,] sues for the estates left by her husband. Adjudged that to the one moiety, which was the estate of the son adopted by the first widow, she, as step-mother, was not heir; but that she should 'recover the other moiety in her own right.' But *quare?* *Naramce Dibeh versus Hur Kishore Rai*, 24th December 1801, .. .. I. 39

5. A deed of adoption and gift construed not to entitle to possession during the life of the person executing it. *Siddh Nuran versus Futteh Nuran*, 16th December 1815, .. .. I. 118

6. The adoption of a boy of above 5 years of age, though the selection be not laudable, is valid according to the Hindu law of *Bengal*, provided the initiatory ceremonies have been performed in the family of the adopter, and not in that of his natural father. *Keerut Nuran versus Musst. Bhobnisree*, 6th September 1806, .. .. I. 161

7. The adoption made by a widow, without authority from her husband, [the *Anumuti-putr*, or deed of permission, exhibited by her, as granted by her husband, appearing to have been fabricated,] declared to be of no effect against a testamentary deed executed by the husband in favor of his younger brothers, whereby his share of the joint estate was bequeathed to them after the death of the widow, with a declaration that he had not given her permission to adopt a son. *Musst. Jaukee Dibeh versus Suda Sheo Rai* and another, 17th July 1807, .. .. I. 197

8. By the Hindu law, there may be two successive adoptions, under due authority for that purpose, by the widows of the same man. *Sham Chunder and another versus Naraince Dibeh*, 21st August 1807, .. .. I. 209

9. An adopted son succeeds collaterally, as well as lineally, in the family of his adoptive father. *Sham Chunder and another versus Naraince Dibeh*, 21st August 1807, .. .. I. 209

10. Claim by the widow of a zemindar [continued on her demise by her husband's kindred] to recover possession of a part of her husband's estate, dismissed on proof that the defendant was entitled to it, not under a deed of gift by the widow, as adjudged by the zillah and provincial courts, since the widow could not alienate the estate left by her husband; but on proof of defendant being the legal heir of the husband, as having been adopted after the husband's death by the widow, under a written authority to her for that purpose. *Nund Koomar Rai and another versus Rajender Nuran*, 2d December 1808, .. .. I. 261

11. Claim to an estate on alleged title through adoption by a widow, under authority from her husband, dismissed, the alleged adoption not having been proved. *Musst. Buwan Munce versus Musst. Soolukhna*, 16th April 1811, .. .. I. 322

12. Claim to an estate on a similar title dismissed; the fact of due authority for the adoption having been delegated by the husband not being established. *Musst. Soolukhna versus Ram Doolal Pandeh and others*, 27th May 1811, .. .. I. 321

13. Authority to a wife to adopt, in the event of disagreement between her and the son of her husband then living, will not avail; the authority to adopt in the event of the son's death would be valid. *Musst. Soolukhna versus Ram Doolal Pandeh and others*, 27th May 1811, .. .. I. 321



14. A *Nyom-putr*, or declaratory deed, executed by a widow reciting that she had adopted a son under authority from her husband, and declaring that the estate was to remain with her during her life, and to go to the adopted son at her demise, is of no avail in law as regards the widow's claim to retain possession: for immediately on the adoption of a son by the widow, under due authority, the estate to which she succeeded in default of male issue, became the property of the son adopted. *Ibid.* . . . I. 324

15. The evidence of witnesses to the fact of an adoption being contradictory, and not supported by circumstantial proof; and the person claiming to have been adopted not appearing in a public document to have been designated as the son of his alleged adoptive father, the presumption will be that the claim is unfounded. *Musst. Sabitra Dace versus Sutarjhum Sutputtee*, 4th August 1812, . . . II. 21

16. A person adopted by the husband stands to him in the relation of a son, and is heir to his estate; but does not become the adopted son of the adoptive wife, nor succeed to her peculiar property. *Sri Nuran Rai and another versus Bhuja Jha*, 27th July 1812, . . . II. 27

17. Nor does the person adopted by the wife, as her son, become the adopted son of her husband, or succeed to his property, not even by the *Mithila shasters*, though the adoption should have been permitted by the husband: but as her son, he will succeed to her property. *Ibid.* . . . II. 27

18. But if the husband and wife jointly appoint an adopted son, he stands in the relation of a son to both, . . . I is heir to the estate of both. *Ibid.* . . . II. 27

19. On the death of a Hindu widow in possession of her husband's estate, claim by A founded on gift and adoption under a written permission of the husband, resisted by B on alleged title of previous gift and denial of the adoption of A. Claim disallowed; proof of permission to adopt being held defective, and the presumption being that, if ever granted, it had subsequently been cancelled. Decision not to bar the claim of the husband's heirs against B, the donee of the widow. *Gunga Ram Baduree versus Kashi Kunt Rai*, 4th February 1813, . . . II. 44

20. A childless Hindu, having two wives, gives each permission to adopt a son. After having himself adopted a son on behalf of the senior wife, he confirms the permission originally granted to the second wife. The son adopted in consequence by her after her husband's death, takes the inheritance jointly with the son adopted by the husband on behalf of the senior wife. *Gourve Pershad Rai versus Musst. Jy Mala*, 12th December 1814, . . . II. 136

21. According to the Hindu law as current in *Benares*, an adoption made by a widow without authority of her husband is illegal, though she may have obtained the consent of the husband's heirs; and does not entitle the person so adopted to the succession to the husband's estate. *Raja Shumshere Mull versus Rancee Dilraj Koor*, 31st January 1816, . . . II. 169

22. The adoption of an only son is invalid under the same *shasters*, unless the natural father deliver the son to the adoptive father on condition that he shall belong to both as a son, and the latter accept and adopt him as such: in this case the adoption is good, and the adopted son is denominated *deya mushyayana*, or son of two fathers. *Raja Shumshere Mull versus Rancee Dilraj Koor*, 31st January 1816, . . . II. 169

*Nund Ram and others versus Kashee Pandeh and others*, 30th June 1825, . . . IV. 70

23. In the *Kritrima* form of adoption, peculiar to the provinces of *Mithila*, the express consent of the person nominated must be obtained, during the life time of the adoptive father: the offer to adopt, as being the act of one of the parties only, and as being merely a proposal to enter into

a contract, being held insufficient to give validity to the transaction. *Musst. Sutiputtee versus Indranund Jha*, 2d April 1816,.. .. II. 173

24. According to the Hindu law current in *Mithila*, a brother cannot be adopted by a brother, for the person to be adopted must bear the 'reflection of son,' or the resemblance of son,—i. e. the capability to have sprung from the adopter himself, or be one who, by a legal marriage of his mother, might have been the legitimate son of the adopter. *Baboo Runjeet Singh versus Baboo Obye Nurnai Singh*, 26th July 1817,.. .. II. 245

25. According to the Hindu law, a son adopted with the permission of her husband by a woman on whom her father's estate had devolved, will not be entitled to take such estate on his adoptive mother's death; but such estate will go to her father's brother's son in default of nearer kindred. *Musst. Gunga Mya versus Kishen Kishore Chowdry and others*, 17th December 1821,.. .. III. 128

26. While a brother's son exists, the adoption of any other individual as son, either in the *Dattaca* or *Kritrima* form of adoption, is invalid. [But see No. 44 *infra*, and the case to which it refers]. *Ooman Dutt versus Kumbia Singh*, 15th April 1822,.. .. III. 144

27. A son adopted by a widow, with the permission of her late husband, has the rights of a posthumous son; so that a sale made by her, to his prejudice, of her late husband's property, unless under circumstances of inevitable necessity, will not be valid. *Rance Kishen versus Raj Oodwunt Singh and another*, 24th June 1823,.. .. III. 228

28. According to the Hindu law current in *Behar*, an only son cannot be given or received in the *Dattaca* form of adoption. *Nund Ram and others versus Kashi Pandeh and others*, 30th June 1823,.. .. III. 232

29. In the case of a Hindu of *Bengal* dying in his father's life time without issue, but leaving his widow authorized to adopt a son; if such adoption be made with the knowledge and consent of her deceased husband's father, at any time before he shall have made any other legal disposition of the property, or a son shall have been born to his daughter in wedlock, no such subsequent disposition, or birth, shall invalidate the claim of the son, so adopted, to the inheritance. *Ram Kishen Serkheyl versus Musst. Srimutee Dibea and others*, 19th June 1824, .. .. III. 367

30. In the case of an adoption made by a widow, without having obtained the consent of her husband, and in which the adopted son shall not have been delivered over to her by either of his parents, but only by his brother, the Court will not hold the adoption valid. *Musst. Tara Munce Dibea versus Deb Nuram Rai and others*, 10th July 1824, .. .. III. 387

31. If a son legally adopted shall, being of age, execute an agreement acknowledging his right to depend on the performance of certain conditions, his infraction of those conditions will be held to nullify his right. *Musst. Tara Munce Dibea versus Deb Nuram Rai and others*, 10th July 1824, .. .. III. 387

32. The heirs of a deceased Hindu in *Shahabad* being a real and an adopted son; the adopted son takes one-fourth, and the real son three-fourths of his property. *Praag Singh versus Ajoodheea Singh*, 7th December 1825, .. .. IV. 96

33. A woman was authorized by her husband to adopt an individual named, or, in the event of any bar to his affiliation, any other Bramin's son. The individual named was adopted by her and died some years after. Held that she was incompetent under the terms of the authority given, to make a second adoption. *Purmanund Bhuttacharj versus Ooma Kunt Lahuree and others*, 18th November 1828, .. .. IV. 318

34. A woman, after her husband's death, is incompetent to give her only son in adoption, as a *Dway Mushyayana*, or son of two fathers, with-

- out authority previously given by her deceased husband. Debee Dyal and another *versus* Hurhor Singh, 29th December 1828, . . . . . IV. 320
35. By the Hindu law applicable to *Behar*, held in conformity with the opinion of the *pundits*, that the permission of the husband is absolutely necessary to legalize adoption by the widow in the *Dattaca* form, and that leave from her husband's kindred will not be sufficient. Jai Ram Dhamu *versus* Moosun Dhamu, 14th January 1830, . . . . . V. 8
36. The natural mother of an adopted son may, as *next friend*, sue to establish his right, legal extinction of maternity notwithstanding. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, . . . . . V. 50
37. The age of five does not limit the period of eligibility for adoption. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, . . . . . V. 50
38. When the gift and acceptance of a second son preceded the death of an elder son, it was held that the full completion of his adoption was legal. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, . . . . . V. 50
39. Tonsure performed in the family of the natural father, after gift, has no vitiating effect. Musst. Doolubh Dai *versus* Manee Beebee, 27th July 1830, . . . . . V. 50
40. A and B, Hindu widows, recovered at law their husband's share in a joint estate, on a gift from him and acknowledgments from his brothers. They had obscurely associated with them in the plaint the minor C, as an adopted son; but the fact and legality of his adoption were disputed and not investigated. The judgment passed is construed as not conclusive in regard to the reversion, and as not establishing an unimpugnable right in C; and in defect of his title shewn, and the proved right of D, D recovers. Baboo Sheo Manog Singh *versus* Baboo Ram Perkas Singh, 24th September 1831, . . V. 145
41. The *Jain* slasters recognize the hereditary right of an adopted son; and by them, a widow is competent to adopt without the sanction of her husband, and the disqualifying age is said to extend to the 32nd year. Raja Govind Nat Rai *versus* Gulal Chand and others, 23d March 1833, . . . V. 276
42. In Hindu authorities on adoption, the convention of kin and representation to the *rya* are mentioned as part of the procedure, but not as essentials of validity. But the *Yajna*, or sacrifice, is such essential; not so the assent of the wife of the adopter. Alunk Manjari *versus* Fukker Chand Sircar, 11th September 1834, . . . . . V. 356
43. Notwithstanding what is stated at page 102, volume I of Macnaghten's Hindu law, the adoption of the daughter of a brother, with the condition that her eldest son shall be the *patrica putra* [son of a daughter] of the adopted, is legal. But it is essential to the validity of the adoption, that it take place previous to her marriage. Nuwab Rai *versus* Buggawuttee Koor and others, 6th January 1835, . . . . . VI. 5
44. Agreeably to the Hindu law current in *Mithila*, the adoption of a sister's son, according to the *Kritrima* form of adoption is legal. Chowdry Purnessur Dutt Jha *versus* Humooman Dut Ray and others, 18th December 1837, . . . . . VI. 192
45. A *Dattaca* son succeeds collaterally as well as lineally. Gour Hume Kubraj *versus* Rutnasuree Diben, . . . . . VI. 203
46. An alleged *Dattaca* adoption, by a person in a state of insensibility from dangerous illness, by verbal declaration, and without performance of prescribed ceremonies, ruled to be illegal and invalid. Bulluba Kant Chowdry *versus* Kishenpria Dossia Chowdrayn, 16th January 1838, . . . VI. 219
47. The agreement of both parties is essential to the validity of an adoption according to the *Kritrima* form. Durgopal Singh and another *versus* Roopun Singh and others, 3d September 1839, . . . . . VI. 271
48. A Hindu widow claimed a share of ancestrel property (under an *anoomuttee putr*, or deed of permission to adopt a son, alleged to have been

executed by her husband) in behalf of the son whom she might adopt. Held by the Sudder Dewanny Adawlut, that, until the adoption was made, no action would lie, and that the expression of any opinion as to the authenticity of the deed was in the present action uncalled for. *Musst. Subudra Chowdryn versus Golukuath Chowdry and another*, 28th December 1843, .. .. . VII. 143

## ALIENATION.

By Daughter, No. 28.

Father, Nos. 2, 13, 14, 27.

Husband, No. 20.

Mother, Nos. 6, 18, 29, 30, 31, 32.

Sharer, Nos. 1, 14, 19, 24, 25, 33.

Step Mother, No. 8.

Widow, Nos. 3, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 21, 22, 29, 30.

Of Endowed Property, Nos. 7, 23, 26.

1. Among the holders of separate shares of a hereditary zemindaree, each may sell his share to whom he pleases: the other sharers have no necessary right of pre-emption. *Ram Ruttun Singh and others versus Chunder Nurain Rai*, 29th September 1792, .. .. . I. 1

2. In the two first under cited cases, it was held that according to the Hindu law current in *Bengal*, the father may give the whole ancestral estate to one son, [or even to a stranger,] to the prejudice of other sons; and that the act, though an immoral, was a valid one. In the third case, however, it was held that a father cannot alienate the whole to one son, to the prejudice of the rest, or even make an unequal distribution of it among the sons. *Eshan Chunder Rai versus Eshur Chunder Rai*, 23d February 1792, .. I. 2  
*Ram Koomar Neace Bachusputtee versus Kishen Kunker Surkboosun*, 24th November 1812, .. .. . II. 42

*Buwani Churn Banerjee versus Heirs of Ram Kunt Banerjee*, 27th December 1816, .. .. . II. 202

3. In this case it was said that the relinquishment by a widow of the *Moshakira*, or proprietary income of an estate, which devolved on her from her husband, would be binding on her husband's heirs; but this seems doubtful. *Sheo Chund Rai versus Subung Dossea*, 14th February 1799, .. .. . I. 22

4. According to the Hindu law current in *Bengal*, a widow taking her husband's property or share of undivided property, has but a life interest in it, and cannot alienate it: on her death it will go to her husband's heirs. *Mahoda versus Kuleance and others*, 14th March 1803, .. .. . I. 63

*Nund Koomar Rai and another versus Rajunder Nurain*, 2d December 1808, .. .. . I. 261

*Musst. Buwanee Muneer versus Musst. Soolukna*, 16th April 1811, .. I. 322

*Kalce Pershad Rai and others versus Degumber Rai*, 28th May 1817, II. 237

5. A widow may give the estate to the person who, as heir of her husband, is entitled to take it at her death; as such gift would be merely a relinquishment of her temporary interest to the person entitled to succeed her. *Musst. Mahoda versus Kuleance and others*, 14th March 1803, .. .. . I. Note. 64

6. A mother cannot alienate the property which devolved on her at the death of her son. On her death, it will go to her son's next heir. *Bijya Dibeer versus Unpoorna Dibeer*, 26th September 1806, .. .. . I. 162

*Nuffer Mitter and another versus Ram Koomar Chatterjea and others*, 26th May 1828, .. .. . IV. 310

7. Lands endowed for religious purposes are not hereditary as private property, and consequently are not subject to private alienation. The management of them alone, for religious purposes, may pass by inheritance. Elder Widow of Raja Chutter Singh *versus* The younger Widow, 15th April 1807, .. .. . I. 180  
Juggut Chundee Sein and another *versus* Kishwanud and others, 12th September 1814, .. .. . II. 129  
Ram Soonder Rai *versus* Heirs of Raja Oodwunt Singh, 30th May 1832, .. .. . V. 210
8. Lands assigned by a zemindar to his stepmother for her maintenance [*Khor-o-posth*] cannot be alienated by her. On her death, they will revert to the zemindar. Kishen Mohun Gosayn *versus* Chutter Singh, 4th November 1808, .. .. . I. 259
9. A widow may alienate her husband's property, or a portion thereof, to pay his *bona fide* debts. Hem Chund Mujmoodar *versus* Musst. Tara Munee and another, 18th December 1811, .. .. . I. 359
10. She cannot, except under special circumstances, alienate more than a moiety of her husband's movable property. Sri Nurain Rai and another *versus* Bhya Jha, 27th July 1812, .. .. . II. 29
11. Nor can she alienate any part of his immovable property, except under special circumstances stated in the *shasters*, without the consent of her husband's heirs. *Ibid.*, .. .. . II. 29
12. A Hindu widow cannot, under any circumstances, alienate the whole of the landed estate which devolved on her on the death of her husband. Nor can she alienate a part of it, except under special circumstances, without the consent of *all* her husband's heirs, notwithstanding she may have got the consent of the nearest heirs. And a deed of gift executed by her in favor of a stranger, to be valid, must be attested by *all* her husband's heirs, as consenting parties. Mohun Lal Khan *versus* Rance Siromunee, 31st August 1812, .. .. . II. 32
13. By the *Mithila shasters*, a father cannot give away the whole ancestral estate to one son, to the prejudice of the rest; for the father and son have equal right in ancestral immovable property. Sham Singh *versus* Musst. Unraotee, 28th July 1813, .. .. . II. 74
14. A childless Hindu widow, taking the entire estate of her husband, is restricted from alienating the same by sale or otherwise, except for the obsequies of her husband, or her own maintenance, unless with the sanction of her husband's heirs. Gocul Chund Chuckerbutty *versus* Musst. Raj Rance and another, 27th January 1816, .. .. . II. 167
15. A Hindu, having no son, executes a deed whereby he grants to his wife the whole of his acquired property in the event of no son being born; but, in the event of a son being born, that the property should go to him. A son was born, but died before his father. The property in question was held to be vested in the son immediately on his birth, and on his death to have reverted to his father as his heir. On the death of the father, the widow has a life interest therein, without power to alienate. Had no son been born, she would have taken the estate under the deed, with power to alienate. Kishen Govind *versus* Ladlee Mohun Thakoor, 30th August 1819, .. .. . II. 309
16. According to the Hindu law as current in Agra, a childless Hindu widow, after her husband's death, will succeed to the moiety of a village granted to him and his brother by the ruler of the country on a rent-free tenure, partition being presumed. After her death it will go to her husband's heirs. Than Singh and another *versus* Musst. Jectoo, 2d December 1819, .. .. . II. 320

17. According to the law current in *Bengal*, a co-parcener may dispose by gift, or otherwise, of his own undivided share of ancestrel landed property, notwithstanding he may have a daughter, or a daughter's son alive. *Buwani Pershad Goh versus Musst. Taramunee*, 28th February 1822, . . . III. 138

18. A sale by a widow of her husband's estate, to the prejudice of her adopted son, will not be valid, even though made before his adoption, unless made under circumstances of inevitable necessity. *Rance Kishen Munee versus Rajah Oodwunt Singh* and another, 24th June 1823, . . . III. 228

19. The profits of the *birt mahabraminee* [or sacrificial fees] do not constitute a fit subject of transfer, and one of the sharers therein cannot transfer to another person his interest therein. *Nund Ram and others versus Kashee Pandi and others*, 30th June 1823, . . . III. 233

20. A husband of *Bengal* may legally convey all his property by deed of gift to his brother, notwithstanding he have a wife living. *Turnee Churn and another versus Musst. Dossee Dossee*, 31st July 1824, . . . III. 397

21. A deed of gift by a widow of the estate which devolved on her at her husband's death, set aside, it appearing that the object of the gift was not, as alleged, the spiritual benefit of her husband. *Ram Chunder Serma versus Gunga Govind Banerjee*, 1st February 1826, . . . IV. 117

22. A gift by a widow set aside as not proved: and, if proved, invalid, as having been made without the consent of her husband's heirs. *Bindrabun Chund Rai and others versus Bishen Chunder Rai*, 25th April 1826, . . . IV. 113

23. The *shewait*, or superintendent, of a religious establishment, is not competent to grant a lease of lands appertaining to the establishment for a longer period than his own life. *Radha Bulubh Chund and others versus Juggut Chunder Chowdry*, 8th May 1826, . . . IV. 151

24. The sale of joint landed property situate in the district of *Mirzapore*, set aside as contrary to Hindu law, by which a partner cannot alienate even his own individual share of joint property without the assent of the rest. *Sheo Surrun Misser versus Sheo Suhai*, 27th May 1826, IV. 158

25. According to the law current in *Bengal*, the gift of joint undivided property to the extent of the donor's share is valid. *Kounla Kunt Ghosal versus Ram Huri Nund Gramnee and others*, 11th January 1827, . . . IV. 196

26. A zemindar of *Bengal* sold part of his ancestrel estate to his mother for her maintenance, on condition of her binding herself not to alienate it, but to leave it to his son on her death. Held that such transaction does not terminate the zemindar's right to the property, or bar the alienation of it by him and his mother jointly, to the prejudice of the eventual heir, the son; for, according to the law current in *Bengal*, a son has no right in ancestrel property during the father's lifetime. *Kounla Kunt Chuckerbutty versus Gooroo Govind Chowdry and others*, 20th January 1829, . . . IV. 322

27. A daughter has no power to alienate by gift her ancestrel property to the detriment of the other heirs of her father. *Musst. Gyan Koonwur versus Deokurn Singh and another*, 3d February 1829, . . . IV. 330

28. The mother and widow of a *brahmin* divided among them his property, consisting of *dewutter* land, and the right of officiating in a temple; reserving to each the power of alienating his own share. Such partition is invalid under the Hindu law, in consequence of the incompetency of the parties,—the widow not having the sole, but only a life interest, without the power of alienating; and a sale executed by the mother, on the strength of the partition, set aside. *Musst. Jye Munee Dheea and another versus Fukeer Chund Chuckerbutty*, 25th March 1829, . . . IV. 337

29. *Khirajee* lands appropriated to defray the expenses of idols, cannot be alienated by the *shewait* so as to determine the right of the idols to the

net revenue. Such sale set aside as inconsistent with the Hindu law current in Bengal. Buwance Pershad Chowdry *versus* Rancee Jugudumbha, 18th November 1829... IV. 343

30. A Hindu widow succeeded to her husband's estate, under his appointment, which authorized her to adopt. Her alienation by conditional sale of a part was held valid against the son, such alienation having preserved the estate from foreclosure under a prior conditional sale by the husband. Pran Nath Rai *versus* Raja Govind Chunder Rai, 14th June 1830... V. 37

31. The *pundits* of the Sudder Dewanny Adawlut declared that, according to the law current in Bengal, the alienation by a mother of part of her minor son's property for his and her own support was valid; but the Court set aside the alienation by a mother, when the husband, the father of the minor, was alive and liable for his support, and when it had been made in pursuance of an engagement, which regarded the recovery of the mother's interest in the property, which was ultimately awarded to her as trustee for her son, and not in her own right. Kishen Lochun Bose and others *versus* Tarnee Dassea and another, 24th August 1830... V. 55

32. In a Bengal case, alienation by a mother, during her son's minority, to raise means to pay his father's debts, and for support, held to be valid under Hindu law, without reference to the *pundits*. Jug Mohun Bose *versus* Pctumber Ghose, 26th January 1831... V. 82

33. Gift of a share in undivided villages in Tirhoot set aside as illegal. Jewun Lal Singh and others *versus* Ram Govind Singh and others, 24th January 1832... V. 163

34. A widow having, during the minority of her sons, compromised to their prejudice a case regarding the property of her deceased husband, her sons, on their attaining their majority, petitioned to have the compromise set aside; which was accordingly done, as according to Hindu law she had no authority to act. Ram Kewul Biswas and others *versus* Juggurnath Biswas and others, 29th January 1835... VI. 19

35. According to the Hindu law current in Bengal, the gift by the proprietor of his patrimonial estate to his paternal relation, while his sister or sister's son exists, is valid. Radha Nath Chowdry *versus* Musst. Kishen Rancee Dossea and others, 4th August 1835... 35

36. A gift by a widow of the property derived from her husband to her daughter [the next in succession] and her daughter's husband, a *brahmin*, is valid according to the Hindu law as current in Bengal. Beerin Nuram Chowdry and another *versus* Sutbhoma Dibeas and another, 6th August 1835... VI. 36

37. According to the *Mitaeshara* and other Hindu tracts that are current in the *Western Provinces*, the sale by a widow, to a daughter's son, of joint property derived from her husband, is invalid. [But see note.] Sheo Burt Singh *versus* Musst. Goosa and others, 10th March 1836... VI. 60

38. According to the Hindu law as current in *Behar*, the alienation by a Hindu father, of immovable ancestral property, without the consent of his sons, except on proof of necessity, is illegal. Motee Lal and another *versus* Mitterjeet Singh and others, 29th June 1836... VI. 71

Baboo Birjurnain Singh *versus* Raja Tekhnuram Singh, 29th September 1836... VI. 131

39. The zillah court having under the Hindu law, which bars the right of a widow to alienate ancestral property, dismissed a claim preferred, on the ground of a deed of sale executed to the plaintiff by a female, the Sudder Dewanny Adawlut reversed the decree; it appearing that the defendants had not pleaded, as a bar to the claim, the rule of law which governed the decision of the lower court; that there was nothing in the pro-

ceedings to shew that the property was ancestral ; and that the defendants, both in the proceedings in court and in private transactions, had admitted the fact of the sale, without offering any objection to the same. *Omrao Singh versus Hem Koor and her heirs*, 29th August 1836... .. VI. 105

40. Held under the Hindu law as current in *Tirhoot*, that the sale of joint undivided property, without the consent of all the sharers, is invalid. *Sheo Churun Lal and another versus Jummun Lal and others*, 6th July 1837... .. VI. 176

41. A Hindu widow, the mother of two minor children, conditionally sold her husband's estate for the purpose of paying off his debts. Held that under the circumstances, the sale was illegal in the absence of proof of the necessity for the alienation. *Sheo Sehai versus Banyad Singh and another*, 10th December 1838... .. VI. 244

42. A Hindoo widow can alienate lands to pay her husband's debts without consent of heirs ; and such sale, even without possession, is valid. *Musst. Oma Chowdhram and another versus Musst. Indermunee Chowdhram and another*, 15th July 1847... .. VII. 351

## ANCESTREL PROPERTY.

Estates Divisible, Nos. 1, 2, 3, 4, 5, 13, 14, 15, 17, 19, 20, 21.

Estates Indivisible, Nos. 6, 8, 9, 10, 11, 12, 13, 16.

1. A hereditary estate managed for many years by some one heir of the original zemindar for the benefit of the rest, they receiving portions of the profits, adjudged to be divisible at the suit of one of the heirs for a division. *Sri Nath Serma versus Radha Kaunth*, 24th November 1796... .. I. 15

2. At the suit of one of the younger members of a Hindu family for a share in the family estate, the legal distribution was adjudged on its appearing that the estate was not the exclusive right of the elder branch ; but that all the members, [who had held lands for their support as sharers,] were entitled to share, though hitherto no division had been claimed. *Dutt Nuran Singh versus Ajeet Singh and others*, 14th February 1799... .. I. 20

3. A zemindar had gone to the elder sons of a Hindu family for three generations ; but, after the great grandson, male issue failing, it went to his widow, on whose death, the defendants, two cousins-german of her husband, took possession. At the suit of a descendant of the second son of the great grandfather, held that at the demise of the great grandson's widow, the cousins-german, as his nearest relations, had a right to succeed. *Beemla Dibeh versus Gouul Nath and another*, 2d January 1800... .. I. 29

4. Members of a Hindu family entitled as heirs to share in the family estate, of which however during 16 years they had never demanded separate possession, but had allowed them to remain, with other parts of the estate, under the control and management of another sharer, a member of the family, are not debarred from claiming possession of their shares ; as it did not appear they had ever consented to relinquish their right as sharers. *Ranee Buwanee Dibeh and another versus Ranee Sooruj Muneer*, 12th May 1806... .. I. 135

5. In a suit by A and B, against their relatives, C and D, for possession of a share of an undivided estate, it appearing that on the demise of their ancestor, several years since, the claimants were heirs to 3½ annas, that they had all along held lands appertaining to the estate for their expenses ; and that C and D, who had managed the estate, had admitted the right of A and B within six years before the institution of the suit, plea of lapse



of time, set up by C and D, not admitted, and judgment passed in favor of the claimants for possession of the share to which, as heirs, they were entitled. *Pertaub Nurain and another versus Opinder Nurain and another*, 15th January 1808, . . . . . I. 225

6. Claim by a widow, as heir to her husband, to a moiety of an estate, dismissed on proof that the husband's brother succeeded before the *Dewanny* grant, under a custom by which it always devolved on one heir. *Mahamaya Dibeh versus Gowree Kunt Chowdry*, 23d May 1808, . . . . I. 236

7. The rules contained in Regulation XI. 1793, for doing away the custom by which particular estates descended entire to a single heir, have prospective operation only, as provided for by that Regulation, from the 1st July 1794, and uphold the validity of successions which may have actually taken place previously to that date. *Mahamaya Dibeh versus Gowree Kunt Chowdry*, 23d May 1808, . . . . . I. 236

*Koonwur Bodh Singh versus Sheo Nath Singh*, 17th November 1813, II. 92

8. In a suit against the son of the late Raja of Tippera for succession to the Tippera zemindaree, there being proof that by the usage of the family, the person appointed *jobraj* is successor to the zemindaree in preference to the next of kin; such usage upheld by the *Sudder Dewanny Adawlut* in conformity with the opinion of their *pundits* as to its legality, and judgment passed for the plaintiff. The zemindaree is not divisible under Section 2, Regulation X. 1800. *Ram Gunga Deo versus Doorga Munce Jobraj*, 24th March 1809, . . . . . I. 270

9. On the suit of the plaintiff for a moiety of an estate against the son of his brother, chiefly under an alleged engagement by his brother, importing that he, the plaintiff, was entitled to a moiety by inheritance, the engagement was rejected as a forgery,—the estate not considered divisible under the Regulations,—and the claim to a moiety by inheritance, even were the estate divisible, barred by lapse of time; the defendant and his father having had adverse *bona fide* possession for more than 12 years. *Radachurn Mohapatra versus Gunga Nurain Mohapatra* and another, 5th March 1810, . . . . . I. 297

10. The landed estate of a refractory zemindar being confiscated, it was conferred on a person in remuneration for services; and on his death was held by his son, and afterwards by his grandson, to the exclusion of all other members of his family. On the suit of two of the sons of the original grantee, to participate with their nephew, judgment was given against them, the zemindaree being one of those estates not liable to division, recognized by Regulation XI. 1793. Provision was made in that Regulation for the gradual abolition of the custom; and it was enacted that after the 1st January 1794, such estates should descend according to the Mahomedan and Hindu laws of inheritance. But this provision was not held applicable to the present case, the father of the claimants having died in 1774. *Koonwur Bodh Singh versus Sheonath Singh*, 17th November 1813, . . . . . II. 92

11. By the special usage of the principal zemindaree in the district of Tippera, the person appointed *jobraj* takes the inheritance in preference to the next of kin; and the person appointed *burra thakoor* is considered next to him in succession, and takes the inheritance on his default, as well as on his death, provided the *jobraj*, after becoming *rajah*, has not nominated another person to be his *jobraj*. *Urjun Manic Thakoor and others versus Ram Gunga Deo*, 24th March 1815, . . . . . II. 139

*Rancee Soomitra versus Ram Gunga Manic*, 26th July 1820, . . . . III. 40

12. Claim by the appellant to the estate of the Raikuts of Bykuntpoor in zillah Rungpoor, on plea of family usage, whereby a brother succeeds a brother to the prejudice of surviving sons, disallowed, on proof that such

was not the family custom. *Pertaub Deb versus Surrup Deb Raikut*, 19th January 1818, .. .. II. 249

13. Claim by the uncle of the respondent to a share of an hereditary estate, which had, prior to the promulgation of Regulation XI. 1793, devolved on the respondent in right of primogeniture, agreeably to the family custom, rejected, although the estate was not one of the nature described in Regulation X. 1800; and held that, on the death of the present proprietor, the property might be distributed according to the law of inheritance among the respondent's children, but not retrospectively so as to benefit his uncle, the original claimant, or his uncle's sons, the present appellants. *Jugunnath and others versus Rughoo Nath Doss*, 1st March 1824, .. III. 311

14. Partition of an ancestral estate decreed, in opposition to the claim of one heir, to hold the same as an indivisible estate. *Baboo Girwardharee Singh versus Kulahlul Singh and others*. *Keerut Singh versus Baboo Girwardharee Singh*, 19th January 1825, .. .. IV. 9

15. In a case relating to an estate in the Jungle Mehals, it was determined that, agreeably to family usage, the brother of the deceased rajah should take the estate to the exclusion of the widow. *Widows of Rajah Zorawur Singh versus Koonwur Pirthee Singh*, 21st April 1825, .. IV. 57

16. Claim to a moiety of an estate in Bhagulpoor, disallowed on proof that the estate had always devolved on the eldest son, or nearest heir of the deceased proprietor, his other heirs being entitled only to food and raiment from the estate. *Musst. Mehralee and others versus Bence Pershad Rai*, 3d May 1815, .. .. IV. 62

17. Claim for a share in an ancestral estate adjudged, the rule of limitation not being applicable to the case of *putteedars* deriving a share of profits. *Surroop Singh versus Dhowkul Singh and others*, 21st September 1825, .. IV. 91

18. Claim to share in certain landed property dismissed; as though the parties were descended from a common ancestor, it was probable that the property had been alienated from the family, and re-acquired by a different branch; and it not appearing that there was any trace of proprietary right, or possession, on the part of the claimants since the Company's accession to the *Dewanny*. *Birja Sahce and others versus Roopum Sahce and others*, 16th January 1826, .. .. IV. 99

19. A decree having been passed by the Patna Provincial Council for the restoration of an estate, [which had been illegally sold,] to one member of a Hindu family, on re-payment of the purchase money; and it being presumable that the right of the other branches of the family had always been kept alive, their respective shares were decreed to them without subjecting them to the payment of any part of the purchase money, which, it was presumed, had been paid out of the produce of the joint property. *Sudashco Singh and others versus Hurlal Singh and others*, 20th June 1826, .. IV. 165

20. A, B and C were brothers, and tenants in common of some ancestral lauds in Tirhoot. A had, several years before his death, given to D, his sister's son, his general estate, and had his name recorded. On his death, B and C sued for A's interest in the undivided lands, and also for his personal estate, and certain villages bought in A's name, which they alleged must have been an accretion on the ancestral estate. The *Sudder Dewanny Adawlut* confirmed the decision of the provincial court, passed on the opinion of the *pundit*, which awarded to B and C right to A's share in the common villages because undivided, and the gift thereof, according to the law current in Tirhoot, consequently illegal; but dismissed the claim to the rest, because sole acquisition [on presumable admission of the plaintiffs] was inferrible, and continued adverse possession of the donor and donee established. *Jewun Lal and others versus Ram Govind Singh and others*, 24th January 1832, .. .. V. 163

21. On the death of A, a zemindar of North Purnea, his eldest son B, took the whole estate, real and personal. The younger son C [who was then a minor] sued to recover a moiety of the patrimony, and also of acquisitions made by B. The claim of C was awarded. B was treated as having acquired on behoof of both brothers, and by credit and means derived from the joint undivided estate, on which he had wrongfully entered as sole successor. The Court considered him as virtually trustee for his younger brother as to half; and provided that allowance should be made to him for the purchase money in the account for which he was liable. *Rajah Baidya Nund Singh versus Rudranund Singh*, 25th April 1832, . . . . . V. 198

22. On the death of A, a Hindu of Behar, the name of B, his widow, was substituted in regard to the lands of which he was recorded as owner. At the end of ten years, C and D, heirs in the male line of a brother of A's great grandfather, sue to recover the whole, and succeed; the widow being entitled to maintenance only, and on presumption that the accessions were acquired out of profits of what was ancestral and parcenary on behoof of all the kinsmen. *Musst. Gunsham Koomarce versus Govind Singh and others*, 10th May 1832, . . . . . V. 202

23. According to the Hindu law as current in Bengal, the gift by the proprietor of his patrimonial estate, to his paternal relation, while his sister or sister's son exists, is valid. *Radhanath Chowdry versus Musst. Kishen Rannee Dossen and others*, 4th August 1835, . . . . . VI. 35

24. According to the Hindu law as current in Behar, the alienation by a Hindu father of immovable ancestral property, without the consent of his sons, except on proof of necessity, is illegal. *Motee Lal and another versus Mitterjeet Singh and others*, 29th June 1836, . . . . . VI. 71

*Baboo Burj Nurain Singh versus Rajah Teknurnain Singh*, 29th September 1836, . . . . . VI. 131

25. A private partition, in the absence of any regular *butwara* by the collector, constitutes a legal severalty for all purposes under the Hindu law. *Baboo Kishen Koomar Sahee versus Musst. Kunchun Koor*, 5th September 1839, . . . . . VI. 273

## ANUMUTI-PUTR.

See 'Adoption,' No. 7.

## APOSTACY.

1. The appellant [a Hindu woman who had embraced the Mahomedan faith] sued her husband to recover property which had devolved on her at the death of her parents. A *punchayt* having decided that she [previous to her apostacy] had forfeited all claim to the property in question by her profligate conduct, their award was upheld and the claim dismissed. *Musst. Rubbee Koor versus Jewun Ram*, 1st April 1818, . . . . . II. 257

## BEQUESTS.

1. A will upheld whereby a Hindu father bequeathed the whole of his zemindaree to his eldest son, subject to a pecuniary provision to the younger sons. [But see "Alienation," No. 2.] *Eshan Chunder Rai versus Esor Chunder Rai*, 23d February 1792, . . . . . I. 2

2. According to Hindu law, every person who has authority, while in health, to transfer property to another, possesses the same authority to bequeath it. *Sri Nurain Rai and another versus Bhya Jha*, 27th July 1812, . . . . . II. 29

3. A *Hindu* widow executes a testamentary deed of gift in favor of her four daughters, granting them equal shares of her landed property, to be entered on by them after her death. B and C, two of the daughters, die during the lifetime of A: the daughters of B, sue D and E, the surviving daughters, for a fourth of the property, in right of her mother. Claim dismissed, the right of B having lapsed by her death. *Musst. Abia and another versus Esur Chund Gungolee*, 2d April 1819, .. .. II. 290

### BIRT MAILABRAMINEE.

See 'Alienation,' No. 19.  
'Privileges,' No. 3.

### BONDS.

1. A bond containing a stipulation that the necessary expense of an endowment shall be defrayed from the produce of the lands appropriated for its support; but mortgaging the surplus profits of the lands, in satisfaction of a debt specified in the bond, is illegal, under the provisions of *Hindu* law. *Jugut Chunder Sem and another versus Kishwa Nund and others*, 12th September 1814, .. .. II. 126

### BRAMACHAREE.

See 'Mohunt,' No. 8.

### BROTHER [FULL BLOOD.]

See 'Acquisitions,' Nos. 1, 13.  
'Adoption,' No. 24.  
'Inheritance,' Nos. 6, 26, 41, 42, 49, 50.

### BROTHER [HALF BLOOD.]

See 'Inheritance,' Nos. 63, 64, 65.

### BROTHER'S SON.

See 'Adoption,' No. 26.  
'Inheritance,' Nos. 49, 54, 57.

### BROTHER'S GRANDSON.

See 'Inheritance,' No. 61.

### BROTHER'S DAUGHTER'S SON.

See 'Inheritance,' No. 47.

### BURRA THAKOOR.

See 'Ancestral Property,' No 11.

### CASTE, LOSS OF.

1. Offences involving final exclusion from tribe, are considered to be perpetual impediments to hereditary succession, according to *Hindu* law. *Sheo Nauth Rai versus Musst. Dayanyc Chowdrayn*, 17th March 1814, II. 108

CHELA.

See 'Mohunt,' No. 4.

CIVIL DEMISE.

1. The plaintiff suing to recover an estate, the defendant pleaded that the plaintiff having relinquished worldly concerns, and retired to Benares to pass the remainder of his days in devotion, could not, under established custom return to the world, and retract a donation of his lands to the defendant. Held, according to the opinion of the *pundit*, that it was not inferrible from the ascertained mode of life of the plaintiff at Benares that he had retired from the world. *Sidh Nurain versus Futteh Nurain*, 16th December 1805, .. .. . I. 118

COLLATERAL KINSMEN.

See 'Inheritance,' Nos. 29, 35.

CONCUBINE.

See 'Inheritance,' No. 8.

COUSINS.

See 'Inheritance,' Nos. 21, 67, 68.

DATTACA.

See 'Adoption,' Nos. 2, 26, 28, 35, 45, 46.

DAUGHTERS.

See 'Alienation,' No. 27.

'Gifts,' Nos. 1, 7, 8.

'Inheritance,' Nos. 1, 2, 5, 26, 27, 29, 32, 43, 49, 50, 51, 54, 58.

DAUGHTER'S SONS.

See 'Gifts,' No. 7.

'Inheritance,' Nos. 49, 50, 61.

DAUGHTER'S SON'S GRANDSON.

See 'Inheritance,' No. 47.

DEBTS.

1. A debt incurred on her own account by a widow of a member of a Hindu family holding joint and undivided possession, is not recoverable from the joint estate, but from the widow personally, or from her separate property. *Musst. Sootee Koonwur versus Punnoo Roy*, 20th March 1837, .. .. . VI. 154

See 'Debts,' No. 10, Part I. General.

DEEDS.

1. A deed executed during mortal sickness held to be void in *Hindu* law, on failure of proof that the person executing it was of sound mind at the time. *Radheh Muncie Dibeh versus Sham Chunder* and another, 27th September 1804, .. .. . I. 85
2. A *hibehnameh* for property, real and personal, was granted by one party to another: an *ikrarnameh* was executed by the donee. Held, that the infringement by the donee of the terms of that engagement, and his demise without possession having been obtained, invalidate any claim by his heir under the deed in question. *Ram Buksh versus Rancee of Raja Juswunt Singh*, 30th December, .. .. . II. 220

DWYA-MUSHYANA.

See 'Adoption,' Nos. 22, 34.

ELECTION.

See 'Mohunt,' No. 7.

ENDOWMENTS.

1. Lands held by a zemindar, for a religious appropriation of which he has the superintendence, are not considered to form part of the zemindaree, provided the endowment is valid under the regulations: the zemindar's having made such endowment does not invalidate it, if antecedent to the *De-wanny* grant. *Collector of Moorshedabad versus Bishemmath Rai* and another, 16th January 1807, .. .. . I. Note. 175
2. On a claim to a half share of certain lands, as a right by inheritance, adjudged that endowed lands are not hereditary property; and the management of them alone, for religious purposes, can pass by inheritance: and the claimant not appearing entitled to manage the moiety in question, judgment given against her. *Elder Widow versus Younger Widow of Raja Chutter Sein*, 15th April 1807, .. .. . I. 180
3. *Juggut Chunder Sein* and another *versus Kishwanund* and others, 12th September 1814, .. .. . II. 129
4. Respondent having been adjudged entitled to half the proceeds of a religious establishment, sues for half the *mesne* profits derived by appellant during her sole possession. There being no means of ascertaining the amount of the appellant's profits, judgment for respondent's holding sole possession during a period equal to that for which appellant singly enjoyed the same. *Musst. Rajoo and others versus Musst. Buddun*, 8th May 1812, .. .. . II. 13
5. Lands granted as a rent-free tenure in *Pudargha*, [literally 'water for laving the feet,'] not resumable according to *Hindu* law; and the management of them having been resumed by the officers of Government, who accounted to the grantee for the proceeds, held that the right to the tenure is not affected thereby. *Collector of Bundelkund versus Churun Doss By-ragee*, 1st December 1824, .. .. . III. 415
6. Held that the *shewait*, or superintendent of a religious establishment, is not competent to grant a lease of the lands appertaining to the establishment for a longer period than his own life. *Radha Bulubh Chund* and others *versus Juggut Chunder Chowdry* and others, 8th May 1826, .. IV. 151
7. The mother and widow of a *Brahmin* divided between them his property, consisting of *dewutter* land and the right of officiating at a temple, reserving to each the power of alienating her own share. Such partition is invalid under *Hindu* law, in consequence of the incompetency of the parties;

and a sale executed by the mother on the strength of it set aside. *Musst. Jymunee Dibia and another versus Fakcer Chund Chukerbutty*, 25th March 1829, .. IV. 337

7. *Khirajee* lands appropriated to defray the expenses of the worship of idols, cannot be alienated by the *shewait* so as to terminate the right of the idols to the net revenue. Such sale set aside as inconsistent with the *Hindu* law current in Bengal. *Buwanee Pershad Chowdry and another versus Rancee Jugudumbha*, 18th November 1829, .. IV. 343

8. Where lands had been assigned by the ancestor of A, by way of endowment for the service of *Hindu* deities, the *Sudder Dewanny Adawlut* held that they were unalienable by A, who had succeeded to the charge of the trust; and claim of A's vendee dismissed. *Ram Soonder Rai versus Heirs of Raja Oodwunt Singh*, 30th May 1832, .. V. 210

9. Profits due to a religious trust are assets of the trust. *Ram Soonder Rai versus Heirs of Raja Oodwunt Singh*, 30th May 1832, .. V. 211

10. A distinction is very properly made between *bona fide* real endowments, and those nominally so. The former, for instance, may be indicated by grant with sanction of the ruling power, and continuous application of income to the object of dedication; the latter by the absence of such characteristic, and by individual appropriation. One of this class was treated as individual property alienable. *Raja Muhtab Chund versus Meerdad Ali and others*, 19th February 1833, .. V. 268

11. Where A bought part of the lands of an alleged endowment, and kept possession 34 years, held that the claim of the heir of the grantor was barred by prescription. A's holding was found *bona fide*, because the endowment was only nominal, and the purchase of A had been made with the privity of the plaintiff, and his ancestor without opposition. *Raja Muhtab Chund versus Meerdad Ali*, 19th February 1833, .. V. 268

12. Held that the local agents could not, under the circumstances, of *their own authority*, remove for alleged disqualification an incumbent from his office of superintendent of a *Hindu* religious institution. Local Agent of Zallah Hooghly *versus Kishnanund Dundee*, 28th March 1848, .. VII. 476  
See 'Mohunt.'

## ENGAGEMENTS.

1. To give validity to an agreement under *Hindu* law, possession of the subject is not necessary. *Sri Nurain Rai and another versus Bhya Jha*, 27th July 1812, .. 11. 30

2. According to *Hindu* law, a minor cannot execute a lease or enter into any other engagement; and a claim founded thereon will not lie against him or his surety, the transaction being invalid *ab initio*. *Kallupnath Singh versus Kumlaput Jah and others*, 12th May 1829, .. IV. 339  
See 'Deeds,' No. 2.

'Joint Families.'

## EVIDENCE.

1. The *Hindu* law provides that, in case of a dispute as to the fact of a partition, recourse be had to presumptive proof in default of written or oral evidence. *Raj Kishore Rai and others versus Widow of Santoo Dass*, 26th October 1796, .. I. Note. 14

2. The mere act of performing the funeral rites of a deceased *Hindu*, does not give a title to succession, without proof of right. *Dutt Nurain Singh versus Ajeet Singh and others*, 14th February 1799, .. I. 21

3. Parol evidence that a *Hindu* woman relinquished her right to share in the estate, not received by the *Sudder Dewanny Adawlut*. *Radha Churn Rai versus Kishen Chund Rai and another*, 25th February 1801, .. I. 33

4. The mere circumstance of messing together is in law no conclusive proof of co-parcenary in property. *Khoda Ram Surma and another versus Terlochan*, 4th September 1801, .. .. . I. 35  
See 'Acquisitions,' No. 16.

## EXCLUSION.

See 'Inheritance,' Nos. 10, 12, 43, 44, 46, 49, 50, 55, 57, 58, 60, 63, 64, 69, 80.

## EXCLUSIVE PROPERTY.

1. A purchase made by a Hindoo, a member of a joint undivided family, with his own funds, held to be his exclusive property. *Kishore Munnee Dossee versus Sreekunt Sem and others*, 4th January 1842, .. .. VII. 67

## FAMILIES UNDIVIDED.

See 'Acquisitions,' *passim*.  
'Gifts.'  
'Appeal,' No. 13, Part 1. General.

## FATHER.

See 'Acquisitions,' Nos. 8, 14.  
'Alienation,' Nos. 2, 13, 14, 27.  
'Inheritance,' No. 49.

## FATHER'S BROTHER.

See 'Inheritance,' No. 58.

## FATHER'S BROTHER'S SON.

See 'Inheritance,' Nos. 21, 51, 67, 68.

## GIFTS.

1. Property given by a Hindu to his daughter, on the occasion of her marriage, is *stridhan*, and passes to her daughter at her death. At the death of the daughter, it ceases to be *stridhan*; and passes to the daughter's heirs as other property. *Pran Kishen Singh versus Musst. Bhagwutty*, 25th April 1795, .. .. . I. 3
2. The gift of the entire estate by one of several co-heirs to another co-heir, would be of no effect as far as it concerned the shares of the other co-parceners; but the gift, if really made by a person of sound mind, would be effectual as far as concerned his own share. *Raj Bulubh Bhooyan versus Musst. Buneta De*, 14th August 1801, .. .. . I. 44
3. The widows of a co-sharer in Benares were considered entitled to take his share, under a deed of gift from him, and a written acknowledgment from his two brothers: without such gift, they could not have taken share by inheritance. *Duljeet Singh versus Sheo Munoo Singh*, 7th September 1802, .. .. . I. 59
4. A co-parcener may give or alienate his own share of joint property. A gift by A to his son, of a *talook* which he had received from his father, while sole zemindar, upheld: as the gift of the *talookdaree* tenure, which is dis-



- inct from the zemindaree right, and usually held as a dependancy paying rent to the zemindar, did not destroy the right of the brother of A in the zemindaree. The alleged acts of ownership on the part of A, after the date of the deed of gift, did not, in the opinion of the Court, vitiate the gift, as they might be no more than acts of guardianship, which it is natural and proper for a father to perform during the minority of his son. *Anund Chund Rai versus Kishen Mohun Banerjee and others*, 4th December 1805, .. .. . I. 115
5. By the Hindu law, as current in *Mithila*, a gift of joint property is invalid. *Sham Singh versus Musst. Umrutee*, 28th July 1813, .. .. . II. 74
6. On a *hibehnumeh* for property, real and personal, being granted by one party, an *ikrarnamoh* was executed by the donee; held that the infringement by the donee of the terms of that engagement, and his demise without possession having been obtained, invalidate any claim by his heir under the deed in question. *Ram Buksh versus Ranee of Rajah Juswunt Singh*, 30th December 1814, .. .. . II. 220
7. According to the law as current in *Bengal*, a co-parcener may dispose by gift or otherwise, of his own undivided share of ancestral property; notwithstanding he may have a daughter, or a daughter's son living. *Bhowancee Pershad Goh versus Musst. Tara Munee*, 28th February 1822, .. .. . III. 13
8. According to the law as current in *Benares*, the gift of property to a brother's son is valid, notwithstanding the existence of a daughter, provided the property be not joint but divided. By the law current in *Bengal* it would be valid, whether the property were divided or undivided. *Baboo Sheo Doss Nurain versus Konwul Bas Koor and others*, 5th July 1823, .. .. . III. 235
9. The fact of the donor's having retained possession of property until her death for 7 years, does not affect the validity of a gift; it being expressly stated in the deed that he was holding the property as a loan from the donee, and it being a rule of Hindu law that a near relation may be in possession for any period, without its operating to transfer the right of property from the proprietor to the possessor. *Baboo Sheo Doss Nurain versus Konwul Bas Koor*, 5th July 1823, .. .. . III. 236
10. A Hindu of *Bengal* may lawfully convey all his property by a deed of gift to his brother, notwithstanding he have a wife living. *Tarnce Churn and another versus Musst. Dassee Dassea*, 31st July 1830, .. .. . III. 397
11. In the case of joint donees with undefined shares, the *pundit* of the *Sudder Dewanny Adawlut* declared that equal interests must be assumed; and where by acquiescence of kin, widows took by gift from their husband, an interest which otherwise would have been for life and have passed to the next of kin, the *pundit* treats as *stridhun*. *Baboo Sheo Munoo Singh versus Baboo Ram Perkas Singh*, 25th September 1831, V. 147
12. A verbal gift by a Hindu, eighteen and a half years of age, made the day before his death, he being at the time in full possession of his senses, is valid. *Gosain Chund Kubraj versus Musst. Kishen Munnee and another*, 8th July 1836, .. .. . VI. 77

See 'Alienation,' *passim*.

## GOOROO.

See 'Mohunt,' No. 4.

## GRAND DAUGHTERS.

See 'Inheritance,' No. 46.

GRANDSONS.

See 'Inheritance,' Nos. 12, 17, 28, 46, 48.

GREAT GRANDSONS.

See 'Inheritance,' No. 17.

GUARDIAN.

1. Between the mother and a brother of a minor, the former has the preferential right of guardianship under the *shasters* and Regulation I. of 1800. *Kooldeep Nurnain versus Rajbunsee Koowur and others*, 20th September 1847, .. .. . VII. 395

GUDEE.

See 'Mohunt,' No. 8.

HEIRS.

See 'Inheritance,' *passim*.

HIBEHNAMEN.

See 'Deeds,' No. 2.

HINDU LAW.

1. The contested estate was situated in Bengal; and the family, originally from *Mythul*, had resided for generations in Bengal,—had intermarried with Bengal women,—and had not invariably observed the religious ordinances of *Mythul*; adjudged that the Bengal law must govern the case. *Raj Nurnain Chowdry versus Gocul Chunder Goh*, 22d June 1801, .. 1. 43

2. A person settling in a foreign district shall not be deprived of the benefit of the laws of his native district, provided he adhere to its custom and usages. *Guuga Dutt Jha versus Sri Nurnain Rai and another*, 24th April 1812, .. .. . II. 11

3. Though according to Hindu law it is unlawful in *brahmins* to traffic in wine; yet, on closing their accounts, they are entitled to their respective shares of the profits of such traffic. *Jye Nurnain Mookerjee versus Bul Ram Rai*, 15th July 1825, .. .. . IV. 84

4. Where the rights of a *Jain* by inheritance were involved, the Sudder Dewanny Adawlut sought solution of questions of *Jain Shaster* which arose, by reference to the Hindu law officer of the Court and *Jain pundits*. *Rajah Govindnath Rai versus Gulal Chund and others*, 23d March 1833, V. 276

See 'Actions,' No. 11, Part I. General.

HUSBAND.

See 'Alienation,' No. 20.

HUSBAND'S BROTHER.

See 'Inheritance,' Nos. 55, 58.

IKRARNAMAH.

See 'Gifts,' No. 6.  
'Deeds,' No. 2.

ILLEGITIMATE SONS.

See 'Bequests,' Nos. 1, 2, Part I. General.  
'Inheritance,' Nos. 19, 20, 52, 53.

IMPEDIMENTS TO SUCCESSION.

See 'Inheritance,' No. 39.

INHERITANCE.

1. On the death of a daughter who received her mother's *stridhun*, it goes to her mother's brother, or his son, in preference to her own daughter, who is a widow without issue. *Pran Kishen Singh versus Musst. Bhagwuttee*, 25th April 1793, . . . . . I. 3
2. Had the daughter been unmarried, or married with a husband living, she would have taken the estate in preference to her uncle, or his son. *Ibid*, . . . . . I. Note. 4
3. Sons succeeding the father share equally. *Gunga Dhur Surma versus Ajoodheer Ram Chowdry*, 30th October 1794, . . . . . I. Note. 8
4. A mother succeeds her son, who leaves no issue male or female, nor widow. *Ibid*, . . . . . I. Note. 8
5. A daughter, provided she is mother of a son, or likely to be so, succeeds one leaving neither male issue nor widow. *Ibid*, . . . . . I. Note. 8
6. A full brother inherits from his brother, leaving neither widow, mother, nor issue. *Ibid*, . . . . . I. Note. 8
7. An uncle succeeds if there be no issue, widow, mother nor brother. *Ibid*, . . . . . I. Note. 8
8. Property, real and personal, having been given by a Hindu to his concubine, and descended at her death to her two surviving daughters; on the demise of one daughter, her sister takes her share: the widow of the donor has no claim. *Musst. Runnoo versus Jeo Ranee*, 8th April 1795, I. 8
9. An adopted son takes the inheritance exclusively, property real and personal, hereditary and acquired. *Kulean Singh versus Kirpa Singh* and another, 23d April 1795, . . . . . I. 9
10. A son adopted by the *Dattaca* form of adoption, which is in use in Bengal, into another family, is thereby excluded from inheritance in his own family. *Sri Nath Surma versus Radha Kunt*, 24th November 1796, . . I. 15  
*Dutt Nurnain Singh versus Ajeet Singh* and others, 14th February 1799, I. 20
11. One adopted by the *Critrama* form, which is in use in *Behar*, *Tirhoot*, &c., takes inheritance both in his own family and that of his adoptive father. *Sri Nath Serma versus Radha Kunt*, 24th November 1796, . . . . . I. Note. 15  
*Musst. Deehoo versus Gowree Shunker*, 23d February 1824, . . . . . III. 307
12. A zemindar in *Bengal* dying left 8 sons: the 1st, 2d and 7th died without issue, the 7th left a widow now surviving. The 8th was adopted into another family and therefore excluded from the paternal inheritance. The zemindaree being divided into 5 parts, the 3 grandsons by the 3d son take 1-5th. The share of the 4th goes to his son and the son of another son; that of the 5th to his only son; that of the 6th to his adopted son; that of the 7th to his widow. *Sri Nath Surma versus Radha Kunt*, 24th November 1796, . . . . . I. 15

13. According to the law current in *Bengal*, the widow of a childless Hindu takes his share of joint property. Ibid, . . . . . I. 15

14. But she has only a life interest in it, and cannot, except under certain circumstances, alienate it from her husband's heir [See *Alienation, passim.*] Ibid, . . . . . I. Note. 16

15. According to the law current in *Behar*, a widow is not entitled to her husband's share of joint property, but to maintenance only. Sri Nath Surma *versus* Radha Kunt, 24th November 1796, . . . . . I. Note. 16

Bhyroo Chunder Rai *versus* Russoo Munce, 18th September 1799, . . . . . I. 27

16. The mere act of performing the funeral rites of a deceased Hindu, gives no title to succession, without proof of right. Dutt Nuran Singh *versus* Ajeet Singh and others, 14th February 1799, . . . . . I. 20

17. A zemindar having 5 sons was survived by three (A, B and C) who are each entitled to take 1-3d of the estate. A had three sons who took each 1-3d of 1-3d, or 1-9th. That of D goes to his adopted son H, son of his brother E. The share of E goes to his 1st and 3rd sons, G and I, [the 2d H having been adopted by D] who each get half of 1-9th or 1-18th. The two sons of F take his share half of 1-9th or 1-18th. The son of B takes his share, 1-3d. That of C fell, on

his death, to his son, and, on his death, to his four grandsons, who took equal shares, or 1-4th of 1-3d = 1-12th each. Ibid, . . . . . I. 20

18. On the partition of an estate among the sons of a deceased Hindu, all share equally. The eldest has no greater claim than the rest on the ground of primogeniture. [*Jethums*]. Bhyroo Chunder Rai *versus* Russoo Munce, 18th September 1799, . . . . . I. 27

19. By the Hindu law, a son not born in wedlock [*Pannerbhara*] may inherit, if such be the custom of the province, but not otherwise. Mohun Singh *versus* Chumun Rai, 20th November 1799, . . . . . I. 26

20. It not being the custom among the *Nagur Brahmins* of Benares for an illegitimate son to inherit, the claim of an illegitimate son of a *Nagur Brahmin* to his father's estate was rejected. Ibid, . . . . . I. 28

21. At the suit of a descendant of the second son of the great grandfather, held that on the demise of the widow of the great grandson, his cousins german, as his nearest heirs, had a right to succeed. Beemla Dibeh *versus* Goculnath and another, 2d January 1810, . . . . . I. 29

22. To one member of a Hindu family who recovered the family property in a law-suit, no greater share is allowed than to the rest, at a legal distribution, except under special circumstances. Radha Churn Rai *versus* Kishen Chunder Rai and another, 25th February 1801, . . . . . I. 33

23. Suit for a zemindar in Orissa, by the father's sister against the step-mother of the late zemindar, who left no issue, having died unmarried. At the time of his death, there were living, besides the plaintiff and defendant, a third wife of the grandfather; with her two daughters, half sisters of the father. One of these afterwards married, and produced a son; the plaintiff also produced a son, during the suit. The Sudder Dewanny Adawlut, under the opinion of the *pundits*, adjudge that, at the zemindar's death, the estate vested in the defendant as heir; [the correctness of this opinion is doubtful, for the Bengal law is current in Orissa, and by it the natural mother only and not the step-mother would inherit, as the word *mata* in the *Daya Bhag* and other Bengal authorities is explained to intend *junmee*, or actual mother; but it was stated that by the *Mitacshara* and

- other *Deccan* authorities, *mata* means both mother and step-mother;] and that having once vested, it could not be divested by the subsequent birth of male issue to other female relatives. *Bishenpirea Munee versus Rancee Soogunda*, 25th September 1801, . . . . . I. 37
24. A Hindu zemindar of *Bengal*, at his demise without issue, left two widows,—an adopted son of his brother,—and the sons of his half brother. The first widow, and then the son adopted by her under due authority, died. The other widow [who states that she also adopted a son, under due authority, after the death of the other,] sues for the whole estate left by her husband. Adjudged that to the moiety, which was the estate of the son adopted by the other widow, she, as step-mother, was not heir; but that she should recover one moiety in her own right. *Nuraynee Dibeh versus Hur Kishore Rai*, 24th December 1801, . . . . . I. 39
25. The sister's son of a deceased Hindu, sues the son of his maternal uncle for his estate situate in *Bengal*. By the law of *Bengal*, the plaintiff would be heir: by the law of *Mythul*, the defendant. As the estate was situated in *Bengal*, and the family, originally from *Mythul*, had resided for generations in *Bengal*,—intermarried with *Bengal* women,—and had not uniformly observed the religious ordinances of *Mythul*; adjudged that the law of *Bengal* must govern the case. *Raj Nurain Chowdry versus Gocul Chund Goh*, 22d June 1801, . . . . . I. 43
26. The eldest of four brothers, proprietors of an undivided estate, dies, leaving a widow, two unmarried daughters, and three brothers. By the *Bengal* law, his widow takes his share of the estate. *Raj Bulubb Bhooyan versus Musst. Buneta De*, 14th August 1801, . . . . . I. 44
27. The second of three brothers, living together and possessing an undivided zemindaree in *Bengal*, dies, leaving, besides his brothers, a widow, and an unmarried daughter. The widow, requiring a division, takes his share or 1-3d of the estate; the partition among brothers being equal, no deduction being allowed in right of primogeniture. *Neel Kaunt Rai versus Munce Chowdrayn*, 25th June 1802, . . . . . I. 58
28. The proprietor of a *talook* in *Benares* died, leaving 3 sons. The first dies leaving a son, the plaintiff; afterwards the second son died. The grandson sued the third son, the defendant, for a portion, and his share. There were surviving, besides the parties, two widows of the second son. Adjudged, that the plaintiff and defendant take half and half by inheritance; and that the widows receive maintenance. *Duljeet Singh versus Sheo Munook Singh*, 7th September 1802, . . . . . I. 59
29. At the decease of a widow who took her husband's estate, the grandson of the full brother of the husband's grandfather, as a collateral kinsman, is entitled to the estate; and he dying before the suit was decided, a decree was passed in favor of his daughter as his heir. *Musst. Muhoda and another versus Musst. Kuleani and others*, 14th March 1803, . . . . . I. 62
30. At the suit of the widow of a Hindu of *Bengal*, who died childless, against his two brothers, the Court, after setting aside as a forgery a conveyance exhibited by the brothers, decreed to her possession of the estate during her life, with a provision that on her death it should revert to her husband's heirs. *Radha Munee Dibeh versus Sham Chunder and another*, 27th September 1804, . . . . . I. 85
31. The proprietor left 4 sons. The widows of the 1st and 2d sons claim the estate. The 4th being adopted into another family, the estate was divided into three parts, and one part adjudged to each of the claimants. The 3d part, the share of the 3d son, who survived the husbands of the claimants, devolved on his legal heirs. *Ram Bowani Dibeh and another versus Rance Sooruj Munee*, 12th May 1806, . . . . . I. 135

32. A gift by a mother to the son of her younger daughter set aside, as prejudicial to the rights of a daughter, who at the time of the gift had not, but afterwards had, male issue. *Musst. Bijya Dibeh versus Mustt. Unpoorna Dibeh*, 26th September 1806... .. I. 162
33. Endowed lands are not hereditary, the management alone for religious purposes devolves on the heir of the endower. *Elder Widow versus Younger Widow of Raja Chutter Singh*, 15th April 1807... .. I. 180
34. An adoption being set aside, the estate devolved equally on six sons of the daughters of the grandfather of the deceased, [four of whom were born prior and two subsequently to his death,] with reservation of the rights of any other sons of daughters, who might be born after the decree. *Musst. Soolukhna versus Ram Doolal Pandeh and others*, 27th May 1811... .. I. 324
35. According to the Hindu law current in *Mithila*, claimants to inheritance as far as the 7th, or even the 14th in descent in the male line from a common ancestor, are preferable to a cousin by the mother's side of the deceased proprietor. *Gunga Dutt Jha versus Sri Nuran Rai and another*, 24th April 1812... .. II. 11
36. The son of the paternal uncle of a woman is not a legal heir to her peculiar property, or *stridhanu*. *Sri Nuran Rai and another versus Bhya Jha*, 27th July 1812... .. II. 27
37. According to the construction received in *Mithila*, the term 'sister' includes half sister. *Ibid.*... .. II. 27
38. According to the law as received in *Bengal*, the sons of the maternal uncle of the deceased take the inheritance in preference to lineal descendants from a common ancestor, beyond the third in ascent. *Roop Churn Muhapater versus Anund Lal Khan*, 1st September 1812... .. II. 35
39. Impediments to hereditary succession, held by the Hindu law to be two-fold : the first temporary and removable, the second perpetual. Offences involving final exclusion from caste are considered to belong to the latter class. *Sheo Nath Rai versus Mustt. Dyamy Chowdrayn*, 17th March 1814... .. II. 108
40. Sons by different mothers share equally. Distribution is made among them *per capita* and not *per stirpes* ; not according to the mothers, but with reference to the number of sons. *Sunmun Singh and others versus Khedun Singh and another*, 27th June 1814... .. II. 116
41. According to the law current in *Mithila*, a childless Hindu widow will not succeed to her husband's share of a joint undivided estate, if he have any brothers living. *Baboo Runjeet Singh versus Baboo Obye Nurain Singh*, 26th July 1817... .. II. 245
42. Claim by the eldest brother against his younger brother to obtain  $7\frac{1}{2}$  per cent. on the moiety of landed property which devolved on him by inheritance from his father, in right of *jethunsha*, or primogeniture, disallowed on proof that *jethunsha* is not authorized by custom. *Sheo Buksh Singh versus Heirs of Futteh Singh*, 18th August, 1818... .. II. 265
43. Property inherited by a daughter goes on her death to her son or grandson, to the exclusion of her sister and sister's son. *Musst. Bijya Dibeh versus Mustt. Unoopoorna Dibeh*, 19th April 1820... .. III. 26
44. The widow of a son who died during his father's lifetime, is not entitled to inherit the father's estate. *Musst. Ayabuttee versus Raj Kishen Sahoo and others*, 25th April 1820... .. III. 28
45. Twelve years is allowed for the re-appearance of a missing person, after which his death will be presumed. *Ibid.*... .. III. 28
46. The heirs of a Hindu being a son's son, two daughters of another son, and the widow of a third son ; adjudged that the grandson takes 1-3d, the grand-daughters 1-3d between them, and the widow 1-3d. The widow

- of a son, who died before his father, entitled to food and raiment only. *Rai Sham Bulubh versus Pran Kishen Ghose*, 4th July 1820,.. .. III. 33
47. The brother's daughter's son, and the grandson of a daughter's son, cannot inherit, even though there should be no other heirs. *Ilias Koonwur versus Agund Rai*, 24th May 1820,.. .. III. 37
48. Maternal grandsons by different mothers take *per capita*, and not *per stirpes*. *Ram Dhun Sein and others versus Kashinath Sein and others*, 17th July 1821,.. .. III. 100
49. On the death of a Hindu leaving neither son, grandson, nor great grandson, his widow succeeds as an heir, without power to alienate. The right of the husband's heirs does not accrue on his death, but on the death of the widow. In this case, the husband's younger brother on the death of his widow, took his estate to the exclusion of the elder brother's son, for the following is the prescribed order of succession to the estate of one leaving no male issue:—1, widow,—2, daughter,—3, daughter's son,—4, father,—5, mother,—6, brother,—7, brother's son, and so forth. The rights of these individuals accrue consecutively; and therefore so long as one holding a prior right exists, the right of the heir whose claim is posterior cannot come into operation. *Rooder Chunder Chowdry versus Sumbhoo Chunder Chowdry*, 8th August 1821,.. .. III. 108
50. A and B were brothers in possession of an undivided estate in Tirhoot. On the death of the former who left a widow, daughter, and three daughter's son, B succeeded to A's portion, and held exclusive possession till his death. On his death, it devolves on his widow to the exclusion of the daughter and daughter's son. *Pokhmuran and others versus Musst. Seesphool*, 5th November 1821,.. .. III. 114
51. On the death of a widow, who inherited as daughter her father's estate, it will not go to the son adopted by her under authority from her husband; but to the nearest heir of her father, who, in this case, was her father's brother's son. *Musst. Gunga Mye versus Kishen Kishore Chowdry and others*, 17th December 1821,.. .. III. 128
52. The illegitimate son of a *Rajpoot*, or any of the three superior tribes, by a woman of the *Sudra* or other inferior caste, is excluded from inheritance, and entitled to maintenance only. *Pershad Singh versus Ranees Muhesri*, 17th December 1821, .. .. III. 132
53. Had it been clearly proved, as alleged by the claimant, who was alleged to be the son of a *Rajpoot* by a *Dhanook* woman, that both his father and grandfather, who inherited the estate, were sons of a *Rajpoot* by a *Dhanook* female, it appears he would have been entitled to inherit. *Ibid.*, .. .. III. 133
54. According to the law current in *Benares*, if the family be not joint, but divided, the property of the deceased would devolve on his daughter; if joint and undivided, on his brother's son, who would share alike. By the law current in *Bengal*, it would devolve on the daughter, whether the family were united or separated. *Baboo Sheo Doss Nurain versus Konwul Bas Koonwur and others*, 5th July 1823, .. .. III. 236
55. According to the law as current in *Bengal*, on the death of a widow, the property which devolved on her at her husband's death, will go to her husband's brother, to the exclusion of his nephews. The widow of another brother is not a legal heir to such property under any circumstances. *Musst. Jye Munee Dibia versus Ranjoy Chowdry*, 6th January 1824, .. .. III. 289
56. In a division of property among Hindus, priority of birth does not entitle to a larger portion. *Taliwur Singh versus Puhlwan Singh*, 2d February 1824, .. .. III. 301
57. According to the law as current in *Behar*, the grandson of a paternal uncle is excluded by a brother's son; and, on the death of the brother's

- son, by his widow, if the family were divided. *Musst. Deepoo versus Gowree Shunker*, 23d February 1824, . . . . . III. 307
58. According to the law current in Bengal, on the death of a widow who claimed her husband's property, her daughter, if she have or is likely to have male issue, will inherit to the exclusion of the husband's brother; and on the daughter's death without issue, her father's brother will inherit to the exclusion of her husband. *Raj Chunder Doss versus Musst. Dhunmune*, 24th May 1824, . . . . . III. 361
59. Claim by a widow for a share of an ancestrel estate as heir of her deceased husband and his brother, dismissed, as her husband died before his father and his brothers. She is entitled to maintenance only. *Musst. Himalta Chowdrayn versus Musst. Puddoo Mune*, 14th February 1825, . . . . . IV. 19
60. The widow of a sister's son [on whom the estate had devolved] takes the estate to the exclusion of the sister herself. *Ramjye Gosayn versus Musst. Ram Mune*, 31st March 1825, . . . . . IV. 47
61. The estate of a Hindu was awarded to his daughter's sons, in preference to the grandsons by lineal descent in the male line of his full brother. *Jug Mohun Mookerjee and another versus Panchann Chatterjee and another*, 27th June 1825, . . . . . IV. 67
62. The heirs of a deceased Hindu in *Shahabad*, being a real and an adopted son, the adopted son takes 1-4th, and the real son 3-4ths of his estate. *Preag Singh versus Ajoodheea Singh*, 7th December 1825, . . . . . IV. 96
63. A *brahmin* of Bengal succeeding as heir to his mother's estate, whether it devolved on her as *stridhun* or as a paternal inheritance, the estate will devolve on his heirs; in the present instance, on his widow, to the exclusion, during her life, of his half brother. *Ram Chunder Serma versus Gunga Govind Banerjee*, 1st February 1826, . . . . . IV. 117
64. Property which devolved on a widow at the death of her husband, without children, goes to her husband's half brother to the exclusion of his maternal grandfather's brother's grandchildren. *Ibid*, . . . . . IV. 117
65. A half brother succeeds to the property of another half brother. *Ibid*, . . . . . IV. 117
66. By the law current in the *West*, a widow does not inherit the property of her husband when held in co-parcenary; but only when held in severalty. In the former case, she is only entitled to maintenance out of it. *Musst. Nund Koor versus Tootee Singh and another*, 6th October 1814, . . . . . IV. 330
67. The sister of a childless Hindu widow, and not her paternal first cousin, succeeds to her estate, by the Hindu law current in *Bengal*. *Rai Sham Bulubh versus Pran Krishen Ghose*, 29th March 1830, . . . . . V. 21
68. By the law current in *Bengal*, a sister's son, [even though unborn, and unbegotten at the time of his maternal uncle's death,] is an heir preferable to the son of the paternal uncle of the deceased; and a sister, likely to produce male issue, [though having none,] as trustee for such issue, enters on the succession of her deceased brother's estate to the exclusion of his paternal uncle's son. *Karuna Mai and others versus Jai Chundra Ghose*, 15th July 1830, . . . . . V. 42
- Kishen Lochun Bose and others versus Tarnee Dossea*, 24th August 1830, . . . . . V. 55
69. The reversionary heirs of the estate of a sonless Hindu (vacated by the widow's death) to which she succeeded, are the heirs who survived at her decease; so that of the several kinsmen of equal degree who would have jointly succeeded, but for the widow, if any die in the interim between the deaths of the husband and widow, their heirs are excluded. *Luxmi Nurain Singh and others versus Tulsi Nurain Singh and others*, 9th April 1833, . . . . . V. 282



70. In a case of succession, A and B, as joint heirs, claim and obtain a share [1-4th] of an estate. In appeal of defendant, the Sudder Dewanny Adawlut awarded to A solely a share, [1-3d], to which he was legally entitled, exceeding that decreed to him and B jointly by the lower court. Complement of stamp duty not exacted. Ibid, .. V. 282

71. Under the Hindu law current in *Bengal*, the sister's son is an heir preferable to the paternal uncle's son; but the right of succession cannot remain in abeyance in the expectation of the future production of such heir, not conceived at the time the succession opened. (But see No. 68.) Lukhee Prya *versus* Bhyrub Chunder Chowdry and another, 29th August 1833, .. V. 315

72. The step-mother has no hereditary right as *quasi* mother. Her claim to succeed to the estate to which the natural mother of her step-son succeeded, on the death of her rival wife, is dismissed. Ibid, .. V. 315

73. The *pundits* agree that leprosy bars hereditary right of the diseased; and issue born during disease, unless disqualification be removed by expiation. This opinion was given in a Bengal case, but the point was not adjudged. Ibid, .. V. 315

74. Can a girl affianced to one man, contract with another a marriage legal according to Hindu law, and will the issue of such marriage succeed to property? Opinions of *pundit* conflict; taken in a Bengal case. Point not adjudged. Ibid, .. V. 315

75. An uncle and nephews were in a state of general severalty, but held some ancestrel property in common. Such tenure by the Hindu law of the western schools, will not establish the right of the nephews to take their uncle's estate before his wife and daughter's son. Raja Putni Mull and another *versus* Rai Munohar Lal and others, 14th April 1834, .. V. 349

76. Claim by a Hindu widow to inherit certain property as the heir of her father and brothers, dismissed; being barred, under the Hindu law, by her mother having outlived her brothers, and by her not having a son alive at the time of their decease; also by her last surviving brother having previous to his death executed a deed of gift in favour of the male heir. Ram-munee Chowdrain *versus* Innulta Chowdrain, 6th January 1835, .. VI. 3

77. According to the exposition of the Hindu law as received in *Bengal*, the son of the deceased's maternal aunt takes the inheritance in preference to lineal descendants from a common ancestor beyond the third in descent. Devanath Ray and another *versus* Muthoor Nath Ghose, 14th April 1835, .. VI. 27

78. A Hindu at his demise leaves two widows, the son of one of them, and the son of a paternal uncle. The son succeeds to the entire estate. On the son's death, before marriage or birth of issue, his mother succeeds. It was held that on her death, the property devolves on the heir of the son, who in this case is the son of the paternal uncle, and not the childless widow of the father. Bhyroba Dossea *versus* Nub Kissore Ghose, 23d February 1836, .. VI. 53

79. According to the law which prevails in *Bengal*, a step-mother does not inherit from her step-son. Ibid, .. VI. 53

80. A son, actual or adopted, who may have accused his actual or adoptive parents publicly, and at the same time falsely of profligate and otherwise disgraceful conduct, cannot, according to the *Bengal shaster*, inherit any property whatever which may have appertained to the said parents, until he shall have performed penance [*praischita*] similar to that to which a *brahmin* is subject, who may have unknowingly slain one of his own tribe. Bhola Nath Rai *versus* Musst. Sabitra and others, 10th March 1836, .. VI. 62

81. The grandsons of the acquirer of certain property sued, during the lifetime of the latter, their paternal uncle, for their shares under the Hindu

- law of inheritance of the estate acquired by their common ancestor. Judgment in favor of the plaintiffs, awarding them the shares of their respective fathers, on proof that the original acquirer had relinquished his title in favor of his sons. Byram Singh and another *versus* Sheeb Suhai Singh and others, 5th April 1836, . . . . . VI. 65
82. Under the Hindu law, a gift of property to a woman by her relation is her *soudayica*, or gift from affectionate kindred. In the present case, a gift by a Hindu to his sister and paternal uncle's daughter was held to be at their entire disposal, as their *soudayica stridhun*, or peculiar property by gift from affectionate kindred. Gosain Chund Kubraj *versus* Musst. Kishen Mune and another, 8th July 1836, . . . . . VI. 77
83. Where the claimants of a woman's *stridhun* are the son of a daughter's son of her paternal great grandfather, and the son of a contemporary wife, or step-son, the latter will inherit under the Hindu law. *Ibid*, . . VI. 77
84. Had the property in the possession of the deceased woman not been *stridhun*, but ancestral property, the daughter's son of her paternal great grandfather, from whom the property descended to her, would succeed in default of other heirs; but, in the event of the woman having outlived such daughter's son, the son of the latter will not inherit. *Ibid*, . . VI. 77
85. The daughter of a paternal uncle will not inherit property left by a woman, which she inherited from her father; but such property will go to her father's heirs, should any such be in existence, in succession according to the law of inheritance. *Ibid*, . . . . . VI. 77
86. The author of the *Vivada Chintamani*, a *Mithila* work, has omitted the daughter's son from the series of heirs but, according to other authorities, including *Mithila* legal writers, the right of a daughter's son, next to a daughter is declared. The Sudder Dewanny Adawlut adjudge that the daughter's son is heir, disregarding his omission in the said work, and thus ruling that the position in the *Duyacrama Sangraha*, that a daughter's son according to *Mithila* writers is not heir, is erroneous. This position seems to have been adopted by Sir W. H. Macnaghten in his Hindu law, without sufficient investigation. Surja Kumari *versus* Gandhrap Singh and others. Mudhoosoodan Singh *versus* Gandhrap Singh and others, 23d February 1837, . . . . . VI. 142
87. On the death of a Hindu landed proprietor, his estate, inherited by him from his father, was awarded by a decree of the Court to the sons of his whole sisters. Held, with reference to such decree, that under the Hindu law as current in Bengal, a son born subsequently to one of the sisters was not entitled to share. Alum Chund Dhur *versus* Bijai Govind Burral and others, 26th March 1838, . . . . . VI. 224
88. A Hindu of Bengal dies possessed of ancestral property. Held that his sister's son [the father's daughter's son] succeeds to the exclusion of the paternal uncles. Further declared by the *pundit* of the Sudder Court that, supposing the sister had no son at the time of her brother's death, she, in the right of male issue [the father's daughter's sons] she might produce, would succeed to the exclusion of the paternal uncles [*Sed quare.*] Sumbhoo Chunder Roy and another *versus* Gunga Churn Sein, 24th July 1838, . . VI. 234
89. A Hindu woman of Behar, who had inherited the entire estate of her father, died leaving a sister's son's sons and a daughter: held that the former succeed, and that *per capita* and not *per stripes*. Sheo Schai Singh and others *versus* Musst. Omed Koonwur, 17th August 1840, . . . . . VI. 301
90. According to the Hindu law as current in *Mithila*, a widow inherits during her life her deceased husband's share of ancestral property when held in severalty; but is only entitled to maintenance when the ancestral estate is held in joint tenancy. Musst. Lalchee Koonwur *versus* Sheopershad Singh and others, 5th April 1841, . . . . . VII. 22

91. In the event of joint succession by a Hindu family to ancestral property, joint tenancy will be presumed until the contrary is proved. *Musst. Joraon Koonwur versus Chowdree Doosht Dowun Singh and others*, 19th April 1841, . . . . . VII. 26

92. According to the Hindu law, as current in *Mithila*, a widow is only entitled to maintenance when the ancestral estate is held in joint tenancy; but, when there are no sons, a widow inherits during her life property which belonged solely to her husband, but without the power of alienating it. *Ibid.*, . . . . . VII. 26

93. According to the Hindu law as current in the west, the daughter of a son who died before his father, the original acquirer of the property at issue, has no right during the life time of the widow of a grandson in the male line of such original acquirer. *Musst. Brijmalee versus Musst. Pran Piaree and others*, 27th December 1841, . . . . . VII. 59

94. In default of sons, grandsons and great grandsons, the widow succeeds to the inheritance of her husband, living separated from his ancestral family, according to the Hindoo law as current in the west. *Raj Koomar Bissessur Koomar Singh versus Musst. Sookh Nundun Koor*, 9th April 1842, VII. 87

95. Under the Hindu law as current in Bengal, the mother succeeds in default of son, grandson and great grandson, in the male line, wife, daughter, daughter's son and father. The mother thus inheriting has no power to alienate ancestral property. On the mother's death, the property will devolve on the heirs of her son, who in this case were his paternal uncle's sons. *Hemlutta Debea versus Goluck Chunder Gosayn*, 1st July 1842, VII. 108

96. A Hindu female in possession of property derived from her husband, in which she had a life interest, contracted debts entirely personal, and for purposes of her own. Held that her husband's heirs, on whom the estate devolved at her death, are not responsible for her debts, which can be recovered only from her separate property. *Bungsee Dhur Hajra versus Thakoor Pyrag Singh*, 5th September 1842, . . . . . VII. 114

97. According to Hindoo law, property derived by a mother from her son cannot be succeeded to by her daughter, the sister never being heir of the brother. *Raj Koomoore Kirpa Mayee Dibeeah versus Rajah Damoodhur Chunder Deyb and others*, 20th February 1845, . . . . . VII. 192

98. The rules of a positive enactment supersede the tenets of Hindu law. A claim to recover possession of property, founded upon adoption which had been postponed beyond 12 years, was dismissed. *Ranee Chundur Munce versus Rajah Birjnath Singh and others*, 20th March 1845, . . VII. 194

99. It is no bar to the division amongst heirs of an estate, the property of a Hindu family, that it formerly belonged to one in which the custom of succession by the eldest son obtained. *Gopal Das Singh and another versus Nurotum Sindh and others*, 26th March 1845, . . . . . VII. 195

100. Under the Hindu law, prostitute daughters living with their prostitute mother, succeed to the mother's property in preference to a married daughter living with her husband. *Tara Munnee Dossea versus Motee Buneanee and another*, 30th July 1846, . . . . . VII. 273

101. Held by the Sudder Dewanny Adawlut, in a suit for succession to an estate, that the illegitimacy of a claimant could not be urged in the appellate court, as conferring a title on disproof of his legitimacy, alone pleaded in support of it in the lower court. The right of succession to the estate in question, decided in favor of a party who established his affinity to the late proprietor in the sixth degree; judgment founded upon the law current in *Mithila*, by which the claims of paternal kindred, who are *sapindas*, which relation includes the descendants of the paternal ancestor in the sixth degree, are preferable to those of maternal kindred cognates. *Chowtreea Run Mardun Sein versus Sahib Perhlad Sein*, The Sudder Board of Revenue *versus*

Sahib Perhlad Sein and another. Chowtreea Run Murdun Sein and another *versus* Rancee Sreekaunt Deybee. Widow of Rajah Tejpertaub Sein *versus* Sahib Perhlad Sein, 26th May 1847, .. .. VII. 292

102. The lower court having decided that a son was not liable for his father's debts for want of proof of succession to his property, when no such plea was urged, the Sudder Dewanny Adawlut over-ruled the judgment. Purmanund Mookerjee *versus* Thakoor Das Ghose and others, 9th June 1847, .. .. VII. 314

103. Suit for his estate by the survivor of two widows of a Hindu, under the general law of inheritance, was held not to be barred by her having formerly sued on a special ground which failed: her claim was however dismissed. Rancee Hurreepreea Dibbee *versus* Bhyrub Indur Narain Rao and others, 4th December 1847, .. .. VII. 414

See 'Practice,' No. 101.

### INITIATORY CEREMONIES.

See 'Adoption,' No. 6.

### JAIN SILEASTERS.

See 'Adoption,' No. 41.

'Hindu Law,' No. 4.

'Majority,' No. 2.

### JETHUNSHIA OR PRIMOGENITURE.

See 'Inheritance,' Nos. 18, 27, 42, 56.

### JOBRAJ.

See 'Ancestral Property,' Nos. 8, 11.

### JOINT FUNDS, OR PROPERTY.

See 'Acquisitions,' *passim*.

'Alienation,' Nos. 1, 2, 13, 14, 19, 24, 25, 33.

'Debts,' *passim*.

'Gifts,' Nos. 2, 3, 4, 5, 7, 8.

'Inheritance,' Nos. 41, 50.

### JOINT FAMILIES.

See 'Acquisitions.'

### JUJMAN.

See 'Prohit,' Nos. 1, 2, 3.

### KOOLACHAR.

1. In cases of inheritance, *koolachar* or family usage, has the prescriptive force of law; but to establish *koolachar* it is necessary that the usage have been ancient, and invariable. Sumrun Singh and others *versus* Khedun Singh and another, 27th June 1814, .. .. II. 116

2. The Hindu law provides for exceptions to its general rules in matters of inheritance, and declares that peculiar customs shall supersede general laws 'a decision must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the law of reason [or according to immemorial usage, for the word *yucti* admits both

senses,] there might be a failure of justice.' Colebrooke's Digest of Hindu law. Volume II, page 128. Rancee Soomitra *versus* Ramgunga Manic, 26th July 1820, .. .. . III. Note. 41

3. Family usage may be a valid plea against the operation of general law, but must be established by clear and positive proof. Raja Baidyanund Singh *versus* Rudranund Singh, 25th July 1832,.. .. V. 198

See 'Ancestral Property,' Nos. 12, 15, 16, 18.

## KRITRIMA.

See 'Adoption,' Nos. 1, 3, 23, 26, 44, 47.

## KURTA POOTRA.

See 'Kritrima,' *passim*.

## LAPSE.

See 'Bequests,' No. 3.

## LEPROSY.

See 'Inheritance,' No. 73.

## LIMITATION.

1. Under the Hindu law, the time allowed for the re-appearance of a missing person is 12 years : after which his death may be presumed. Ram Lochun Pridhan *versus* Hurchunder Chowdry, 13th August 1836, .. VI. 98

See 'Limitation,' Nos. 1, 4, 10, 19, 21, 24, 32, 36, 40, 50. Part I. General.

## LINEAL DESCENT.

See 'Inheritance,' No. 38.

## MAHABRAMIN.

See 'Privilege,' No. 3.

## MAINTENANCE.

1. The widow of a Hindu, who died before his father, is entitled to food and raiment only. Rai Sham-Bulubh *versus* Pran Kishen Ghose, 4th July 1820,.. .. III. 33

Musst. Himulta Chowdrain *versus* Musst. Pudoo Munee Chowdrain, 14th February 1825,.. .. IV. 19

2. A widow [Hindu] has no claim on her step grandson, or her step-son's widow for maintenance, while she has a step-son living, who alone is bound to maintain her, even though the others are in joint possession with him of her husband's estate. Kishanund Chowdry and others *versus* Musst. Rookunee Dibia, 15th February 1821,.. .. III. 70

3. Where the widow of a Hindu is excluded by law from inheriting her husband's property, the courts are authorized to fix the amount of maintenance receivable from her husband's heirs, with reference to the circumstances of the family. Musst. Bheeloo *versus* Phool Chund, 24th March 1823,.. .. III. 223

- Musst. Nund Koor *versus* Toolsee Singh and another, 6th October 1814, .. .. . IV. 330  
 See 'Alienation,' No. 8.  
 'Ancestral Property,' No. 9.  
 'Inheritance,' Nos. 15, 28, 32, 59, 60.

## MAJORITY.

1. According to *Hindu law*, majority begins with the 17th year. Luchmun Doss *versus* Roop Chund, 26th April 1831, .. .. . V. 114  
 2. According to the *Jain shasters*, majority begins with the age of 16 years completed. Raja Govind Nath Rai *versus* Gulal Chand and others, 23rd March 1833, .. .. . V. 280

## MARRIAGE.

1. Expenses incurred by the widow of a *Hindu*, for the marriage of a daughter, are recoverable from his estate. Preag Nuram *versus* Ajodhya-purshad and others, 17th June 1848, .. .. . VII.

## MANAGER.

- See 'Acquisitions,' Nos. 5, 18, 19.

## MATERNAL UNCLE'S SON.

- See 'Inheritance,' No. 25.

## MESNE PROFITS.

- See 'Endowments,' No. 3.

## MESSING TOGETHER.

- See 'Acquisitions,' Nos. 2, 4, 9.

## MINOR AND MINORITY.

- See 'Engagements,' No. 2.  
 'Majority,' *passim*.

## MISSING PERSON.

- See 'Limitation,' *passim*.

## MOHUNT.

1. Claim by the appellant on the respondent, for a moiety of property possessed by the late *mohunt*. On proof that the respondent was installed as the *mohunt's* successor, at the celebration of his obseques, judgment given against the claim. Dhun Singh Gir *versus* Mya Gir, 15th August 1805, .. .. . I. 153  
 2. Claim to recover *lakhiraj* lands, which had been held by the late *mohunt*, or principal of a religious establishment : judgment for the claimant, on proof that he was duly nominated by the late *mohunt*, and installed by the *mohunts* of the surrounding districts as his successor. Ram Rutun Doss *versus* Bunmalee Doss, 15th December 1806, .. .. . I. 170  
 3. On the claim of a *Sunyasi* to the succession of a deceased *mohunt*, it appearing that the claimant was principal pupil of the deceased, and had been installed as his successor at the obseques by an assembly of *mohunts*, judgment given in his favor. Gunes Gir *versus* Amroa Gir, 9th November 1807, .. .. . I. 218

4. The successor to a *gooroo*, or spiritual teacher, must by the law of the *Sunyasi* sect be a *chela*, or pupil, of the deceased. *Ibid*, .. I. 218

5. In a suit for possession of the endowed lands of a *mohuntee*, the plaintiff, (between whom and the defendant there had been disputes about the right of succession to the late *mohunt*) determined by a *punchayat*, or assembly of *mohunts*, convened by order of the Sudder Dewanny Adawlut, to be the rightful successor; and possession adjudged to him accordingly. *Surubanund Purbut versus Deo Singh Purbut*, 31st January 1810, .. I. 296

6. In a suit for a *mohuntee*, on the ground that the plaintiff was the successor appointed by the last incumbent, and afterwards regularly installed, the case was not made out, and the claim dismissed; but the defendant in possession of the endowed lands not having been regularly elected, or installed, after the death of the last *mohunt*, as required by the usage of the sect, the Sudder Dewanny Adawlut directed that an assembly of *mohunts* be convened to elect and instal the defendant, if entitled, or any other person in whom the title may be vested. *Gunga Doss and another versus Tiluk Doss*, 26th November 1810, .. I. 309

7. The office of *mohunt*, or superintendent of a *Hindu* religious establishment, having been by usage elective, such usage must be adhered to, in preference to any other mode of succession; nor can any relinquishment, or devise by the late incumbent, in favor of another person, operate further than as a nomination, which, to avail, must be confirmed by the usual mode of election. *Nurain Doss versus Bindrabun Doss*, 10th May 1815, .. II. 151

8. The nephew of a deceased *Bramacharee* was appointed to succeed him on the *guddee* of a religious endowment, on proof of his title being superior to that of the person in possession, for various reasons assigned in the decree. *Sheo Ram Bramacharee versus Subsookh Bramacharee*, 24th May 1824, .. III. 358

9. A claim for the office of presiding *mohunt* of a temple at Juggernath was decided in favor of the plaintiff, on the grounds of his having been the principal *chela*, or pupil, of the late *mohunt*,—of his having been nominated by the latter to the succession,—and of the nomination having been adhered to by the appointing *mohunt* during the latter years of his life, against the claim of the defendant, who had a prior nomination to the succession by the same party, and pleaded a deed of gift in his favor of the temple and its appendages. *Mohunt Ramanooj Doss versus Mohunt Debraj Doss*, 17th June 1839, .. VI. 262

10. In a claim to the office of presiding *mohunt* of a *muth* at Juggernath, misappropriation of its property and funds by the plaintiff, although not disqualifying him according to the *shasters*, was held under Regulation XIX. 1810 to bar his title. *Ram Churn Das versus Chutter Bhoje and another*, 13th May 1845, .. VII. 205

#### MOSHAHIRA.

See 'Alienation,' No. 3.

'Annuity,' No. 1, Part I. General.

#### MOTHER.

See 'Alienation,' Nos. 6, 18, 29, 30, 31, 32.

'Inheritance,' Nos. 4, 23, 49, 78.

#### NAGUR BRAMINS.

See 'Inheritance,' No. 20.

#### NEPHEW.

See 'Inheritance,' No. 75.

NYUMPUTR.

See 'Adoption,' No. 14.

OBSEQUIES.

1. The mere act of performing the funeral rites of a deceased Hindu can give no title to succession, without proof of right; but this duty is incumbent on the person succeeding to the estate of the deceased. Dutt Nurain Singh *versus* Ajeet Singh and others, 14th February 1799, .. .. I. 20

PATERNAL UNCLE'S SON.

See 'Inheritance,' Nos. 36, 38, 71.

PATERNAL UNCLE'S GRANDSON.

See 'Inheritance,' No. 57.

PARTITION.

1. When partition is denied, the fact may be ascertained by reference to separate possession of house, or separate transaction of affairs. Raykoomar Bissessur Koomar Singh *versus* Musst. Sookh Nundun Koor, 9th April 1842, .. .. 87

See 'Ancestral Property,' Nos. 1, 2, 3, 4, 5, 13, 14, 15, 17, 19, 20, 21, 25.  
See 'Inheritance,' 99.

PATRIMONIAL PROPERTY.

See 'Ancestral Property,' *passim*.

PAUNER BHAVA.

See 'Inheritance,' No. 19.

PENANCE.

See 'Inheritance,' No. 18.

PILGRIMS.

1. Pilgrims to Gya are at liberty to choose their own *kurhwa*, or conductor, who will enjoy the emoluments arising out of the office, notwithstanding any claim of right to officiate in that capacity set up by another person. Beharee Gyawal *versus* Musst. Deepoo, 17th January 1816, .. II. 164  
2. The presents made by pilgrims of certain sects to any one of the Benares *Gungapootras*, or conductors, must be divided equally among them all, according to the usage of the tribe. Dyal Nath and others *versus* Kewul Ram and others, 22d February 1826, .. .. IV. 123

POSSESSION.

See 'Ancestral Property,' Nos. 2, 4, 5, 9.  
'Engagements,' No. 1.  
'Gifts,' Nos. 4, 5, 9.



## PRAISCHITTA.

See 'Inheritance,' No. 80.

## PRACTICE.

See 'Practice,' Nos. 17, 61, Part I. General.

## PRECEDENCE.

1. Claim by Hindus to establish their right of precedence among families with which they were in the habit of associating, dismissed for want of proof. Ram Kaunt Khan and others *versus* Kishen Mohun and others, 3d May 1837, .. .. VI. 162

## PRE-EMPTION.

1. The Hindu law recognises no right of pre-emption, though in practice the right seems to be universally admitted. Ram Ruttun Singh and others *versus* Chunder Nurain Rai, 29th September 1792, .. .. I. 1

2. Vicinage and partnership do not confer any right of pre-emption, according to the Hindu law current in Bengal, and, according to the same law, a sale by a coparcener of his share of the joint property is valid. Ram Kunhee Rai and others *versus* Bung Chund Banerjee, 24th February 1820, .. .. III. 17

3. In a litigation between Hindus, which arose in *Tirhoot*, the right of pre-emption founded on common tenancy was admitted by the Sudder Dewanny Adawlut, as conformable to local usage and reason, and sustained by a *bewustha* of its *pundits*. Onceid Rai and others *versus* Nukched Rai and others, 28th October 1830, .. .. V. 68

4. A and B, [Hindus,] tenants in common, mutually covenanted to give each other the right of pre-emption, and that each should have the right to redeem, if the other sold to a stranger in contravention of this covenant. B did sell to C, a Moslim native officer, in contravention. A, on information received, impugned the sale as corrupt in the criminal courts; where, as also in the civil court summarily, he asserted his right of pre-emption. On a regular suit of A against B, at the end of about six years, his right to redeem on the covenant was decreed. Rajinder Nurain Adhekar and another *versus* Syud Ubdul Hakim and others, 19th July 1833, .. V. 307

5. In a suit between Hindus in Shahabad in the province of Behar, the Sudder Dewanny Adawlut admitted the right of pre-emption founded on vicinage and contiguity of property, the land of the claimants being situated in the same *puttee*, or portion of the village as those which formed the subject of action. Ram Nath Singh *versus* Rajroop Singh, 14th July 1836, VI. 82

6. The Sudder Dewanny Adawlut admitted the right of pre-emption founded on partnership in a suit between Hindus, which originated in Shahabad, in the province of Behar. Muhabul Nath Tewaree and others *versus* Bhowanee Dutt Singh and others, 24th July 1836, .. .. VI. 83

7. The Sudder Dewanny Adawlut upheld the right of pre-emption founded on common tenancy, in a suit between Hindus, which arose in the district of *Tirhoot*. Muthun Lal *versus* Deo Murat and others, 10th May 1837, .. .. VI. 163

8. A and B hold equal shares in certain villages. A sells his portion of one village to C, for a specific sum [say 6,000 rupees,] and also sells his share of the other villages to D for the same sum. B then sells his share of all the villages to D for a sum [say 8,000 rupees,] without specification of

the price of each. C claims the right of pre-emption of the share of the village of which he had already purchased a portion from A. Held by the Sudder Dewanny Adawlut, that the price to be paid by C to D should not be determined with reference to the price paid by C to A, but adjusted with reference to the relative value of the shares sold by A. Mahudeo Dutt *versus* Poorun Beebee and others, 16th January 1840, .. .. VI. 277

9. Held that were the right of pre-emption among *Hindus* is recognised on the ground of local custom, the rules and restrictions of the Mahomedan law are applicable to claims of that nature, as the right originates in the Mahomedan law. Mewa Lall and others *versus* Sooltan Singh and another, 25th July 1843, .. .. VII. 129

10. A right of pre-emption cannot be claimed previous to actual sale. Purbhoo Raee *versus* Blekhun Raee, 22nd April 1848, .. .. VII. 487

11. The *malick* of a resumed *mafee* tenure, which had been settled with the *mafeedar*, has not the right of pre-emption on sale of the property by the latter. Omrao Singh and others, *versus* Sukhawut Hosein and others, 31th December 1848, .. .. VII.

### PRESUMPTION.

See 'Acquisitions,' Nos. 2, 10, 19.

'Adoption,' Nos. 15, 19.

'Ancestral Property,' Nos. 9, 10.

'Gifts,' No. 11.

### PRIMOGENITURE.

See 'Ancestral Property,' No. 6.

'Inheritance,' Nos. 18, 27, 42, 56.

### PRIVILEGES.

1. Claim to the exclusive privilege of performing, within a certain limit, the *Hindu* ceremony of burning the dead, and receiving the usual compensation paid for such service, allowed by the Sudder Dewanny Adawlut. Kala Chand Chukerbutty *versus* Jugul Chukerbutty and others, 2nd June 1809, .. .. I. 279

2. The fees arising from the privilege conferred in the above instance, however, were understood to be perfectly voluntary; and the precedent must be received with circumspection. *Ibid.*, .. .. I. Note. 279

3. Claim to share in the *birt mahabraminee*, or right to receive the fees at the ceremonies performed on the 11th day after the death of a *Hindu*, dismissed. Nundram and others *versus* Kashee Pandeh and others, 30th June 1825, .. .. IV. 70

See 'Pilgrims,' No. 1.

'Golahs,' *passim*, Part 1. General.

### PROHIT.

1. A *Jujman*, or member of a *Hindu* family, who employs a certain *prohit*, or officiating priest, is not at liberty to discard such priest, while capable of performing sacrificial or other religious duties. Radha Kishen and others *versus* Sham Surma and others, 8th April 1818, .. .. II. 259

2. *Jujmans*, or *Hindu* families employing a priest, cannot discard him in the absence of any disqualifying cause. Musst. Chowrassee *versus* Jewun Chund Mehtoon and others, 28th February 1837, .. .. VI. 152

3. In an action by the heir of a priest, alleged to have been employed by certain families, for the profits arising from the office of a *prohit*, the Sudder

Dewanny Adawlut held that it was necessary to prove that the priest had been appointed with the consent of the *ujmans*. Ibid, .. .. VI. 152

### PUDARGHA.

See 'Rent-free Tenures,' No. 17, Part I. General.

### PUNCHAYUT.

See '*Mohunt*,' Nos. 1, 2, 3, 5, 6.

### PUTRICA-PUTRA.

See 'Adoption,' No. 43.

### RELIGIOUS ENDOWMENTS.

See 'Endowments,' *passim*.

### RELINQUISHMENT OF CLAIM.

1. The *pundits* declared that a *ruffanameh*, by which a *Hindu* widow relinquished the property which devolved on her at her husband's death, would, if proved, be binding on her and her husband: but the latter seems doubtful. Sheo Chund Rai *versus* Lubung Dossea, 14th February 1799, .. .. I. 22

2. Parol evidence that a *Hindu* widow relinquished her title to her husband's estate, not received by the Sudder Dewanny Adawlut. Radha Churn Rai *versus* Kishen Chunder Rai and another, 25th February 1801, I. 33

3. A deed of relinquishment [*ladavee*] executed by A, the widow of B to C, son of B's paternal grand uncle, will not bar the right of the legal heirs of B to take his estate. Hem Chund Mujmoodar *versus* Musst. Taramunce and another, 18th December 1811, .. .. I. 359

See 'Alienation,' No. 5.

'Inheritance,' No. 81.

'*Mohunt*,' No. 7.

### RENT-FREE TENURES.

See 'Rent-free Tenures,' Nos. 4, 17, Part I. General.

### RETIREMENT FROM THE WORLD.

See 'Civil Demise,' *passim*.

### RETRACTION.

See 'Civil Demise,' *passim*.

### REVIEW OF JUDGMENT.

See 'Review,' No. 2, Part I. General.

### RUFFANAMAIL.

See 'Relinquishment,' No. 1.

### SALE.

1. Sale of joint undivided property, situated in the district of Tirhoot, by one partner without consent of the rest, is illegal. Sheo Suhaee Sahoo *versus* Sreekishen Sahee and others, 16th June 1842, .. .. VII. 105

2. The plaintiff, in the lifetime of his father, sued to set aside a sale of ancestral property executed by the latter while a prisoner in jail under a

criminal sentence: claim dismissed as the father had full power under the Hindu law to effect the sale. Kalli Dass Neogee *versus* Chundurnath Rae Chowdhree, 20th July 1843, .. .. . VII. 128

# SACRIFICIAL FEES.

See 'Alienation,' No. 19.

# SECURITY.

See 'Security,' No. 3, Part I. General.

# SHARER.

See 'Alienation,' Nos. 1, 14, 19, 24, 25, 33.

# SHARES.

See 'Inheritance,' *passim*.

# SHEWAIT.

See 'Endowments,' Nos. 5, 7.

# SHEWUTTER.

See 'Rent-free Tenures,' No. 5, Part I. General.

# SHOOFA.

See 'Pre-emption,' *passim*.

# SISTER [FULL BLOOD.]

See 'Inheritance,' Nos. 37, 43, 60, 67.

# SISTER [HALF BLOOD.]

See 'Inheritance,' No. 37.

# SISTER'S SON.

See 'Inheritance,' Nos. 25, 43, 68, 71.

# SISTER'S SON'S WIDOW.

See 'Inheritance,' No. 60.

# SLAVERY.

See 'Slavery,' Part I. General.

# SONS.

See 'Acquisitions,' Nos. 8, 14.

'Alienation,' Nos. 13, 27.

'Inheritance,' Nos. 3, 12, 17, 18, 28, 40, 62.

## SOUDAYICA.

See 'Inheritance,' No. 82.

## STEP MOTHER.

See 'Alienation,' No. 8.  
'Inheritance,' Nos. 23, 24, 72, 78, 79.

## STRIDHUN.

See 'Gifts,' No. 1.  
'Inheritance,' Nos. 1, 2, 6, 63, 82.

## SUCCESSION.

See 'Ancestral Property.'  
'Inheritance,' *passim*.

## SUNYASI.

See 'Mohunt,' Nos. 3, 4.

## SUPERINTENDENT.

See 'Endowments,' Nos. 2, 5, 7, 8.

## TONSURE.

See 'Adoption,' No. 39.

## TRUSTEE.

See 'Endowments,' Nos. 2, 5, 7, 8.

## UNCLE.

See 'Inheritance,' Nos. 7, 68, 75.

## UNDEFINED SHARES.

See 'Gifts,' No. 11.

## UNDIVIDED PROPERTY.

See 'Alienation,' Nos. 1, 4, 14, 24, 25, 33.  
'Ancestral Property,' No. 20.

## USAGE.

1. Where by the established usage of any particular country, or province, the right of succession may be preserved to illegitimate children, as well as those born in wedlock, or adopted, such usage is to be adhered to. Mohun Singh *versus* Chumun Rai, 20th November 1799, .. .. . 1. 28

2. An estate being situate in Bengal, and the family, originally from Mithla, having resided in Bengal for generations, intermarried with Bengal women, and not having uniformly observed the religious ordinances of Mithla; adjudged that the law as prevalent in Bengal must govern the case. Raj Chunder Narain Chowdry *versus* Gocul Chund Goh, 22d June 1801, .. .. . 1. 43

3. It is usual with the people of the religious order of *gosayns* or *sunyasees*, on the death of the *mohunt*, to convene an assembly of the order, and to instal some one of his pupils whom he may have nominated as his successor; and the Sudder Dewanny Adawlut, on proof of these ceremonies having been performed with respect to the plaintiff, confirmed his appointment. *Dhun Singh Gir versus Mya Gir*, 15th August 1806, .. .. I. 153

4. A person settling in a foreign district shall not be deprived of the benefit of the laws of his native district, provided he adhere to its customs and usages. *Gunga Dutt Jha versus Sree Nuram Rai* and another, 24th April 1812, .. .. II. 11

5. In cases of inheritance, *koolachar*, or family usage, has the prescriptive force of law: but to establish *koolachar*, it is necessary that the usage have been ancient and invariable. *Sumrun Singh and others versus Khedun Singh and another*, 27th June 1814, .. .. II. 116

6. The office of *mohunt* having been by usage elective, such usage must be adhered to in preference to any other mode of succession; nor can any relinquishment, or devise in favour of another person, operate further than as a nomination, which, to avail, must be confirmed by the usual mode of election. *Nurain Doss versus Bindrabun Doss*, 10th May 1815, .. .. II. 151

7. Family usage may be a valid plea against the operation of general law, but it must be established by clear and positive proof. *Raja Baidyanund Singh versus Rudranund Singh*, 25th April 1832, .. .. V. 198

8. The plaintiff sued to recover the *raj* of one of the tributary *mehals* of Cuttack, as the son and heir of the late possessor. The claim dismissed on the ground that, under the circumstances of his birth, the plaintiff was not entitled to succeed according to the family usage. *Raja Jenardhun Ummur Singh Mahinder versus Obay Singh alias Sham Soonder Mahinder*, 2d September 1835, .. .. VI. 42

9. Agreeably to the family usage, the succession by primogeniture to an estate in Chota Nagpore [under the agent to the Governor General for Hazareebagh] was held against a claim for division of the ancestrel estate. *Thakoorai Chutterdharee Singh versus Thakoorai Telukdharee Singh*, 22d May 1839, .. .. VI. 260

10. Long existing family usage, ruled to supersede the ordinary laws of inheritance in large zemindarees, or petty rajships, exemplified in the case of the zemindaree of Pachette, in which the reigning raja is competent on succession to revoke, modify, or confirm, grants made by his ancestors. *Raja Guru Nurayn Deo versus Unund Lal Singh*, 24th February 1840, .. VI. 282

11. The plaintiff sued to obtain possession of one of the tributary *mehals* of Cuttack, as heir of the late raja; claim dismissed on proof that the plaintiff was son of the late raja by a slave girl, and as such not entitled to succeed. *Bulbader Bhourhur alias Bulbader Sree Chunder Muhapater versus Raja Jugurnath Sree Chunder Muhapater*, 29th July 1840, .. VI. 296

See 'Ancestrel Property,' Nos. 3, 6, 8, 11, 12, 13, 15, 16.

'Pilgrinus,' No. 2.

#### VERBAL.

See 'Evidence,' No. 3.

#### VICINAGE.

See 'Pre-emption,' No. 2.

#### WIDOWS.

1. A claim by a Hindu widow for an allowance from her husband's family dismissed with reference to her own conduct, which, in the opinion of the Court, deprived her of all claim to a maintenance from them. *Muha Rancee*

Bussunt Koomaree *versus* Muha Ranee Kumul Koomaree and another,  
29th December 1843, . . . . . VII. 144

2. A Hindu widow does not forfeit her right of succession by removing  
from the family dwelling house of her deceased husband. Oma Debea and  
others *versus* Kishen Munnee Debea, 29th July 1846, . . . . . VII. 270

See 'Adoption,' Nos. 4, 7, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21,  
25, 27, 29, 30, 33, 34, 34, 36, 40, 41.

'Alienation,' Nos. 3, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 21, 22, 29,  
30, 34, 36, 37, 39, 41.

'Ancestral Property,' Nos. 3, 6, 15, 22.

'Bequests,' No. 3.

'Debts,' No. 1.

'Gifts,' No. 1.

'Inheritance,' Nos. 8, 13, 14, 15, 24, 26, 27, 28, 30, 31, 41, 44, 46,  
49, 50, 55, 58, 59, 66, 76.

'Relinquishment of Claim,' Nos. 2, 3.

'Decrees,' No. 2, Part I. General.

#### WILL.

See 'Bequests,' Nos. 1, 3.

#### WITNESS.

See 'Evidence,' No. 3.

#### WIVES.

See 'Widows,' *passim*.

## PART III.

### MAHOMEDAN LAW.

#### ABSENTEE.

1. According to Mahomedan law, the death of a missing person may be presumed when 90 years from his birth have elapsed, after which his estate may be divided among his heirs. *Musst. Mani Beebee versus Must. Sahebzada*, 15th April 1831, .. .. V. 108

#### ACKNOWLEDGMENT.

1. A written acknowledgment by the husband to one of his wife's heirs after her death, held to be sufficient proof of amount settled as dower. *Ali Buksh Khan versus Kaim Beebee*, 24th August 1805, .. I. 83
2. The acknowledgment of a brother by the heir entitles to inheritance, according to Mahomedan law. *Meher Ali and another versus Kureem-onnissa*, 28th April 1814, .. .. II. 113

#### ALIENATION.

1. A Mahomedan may assign her property for a religious endowment. *Mahomed Sadik versus Mahomed Ali and others*, 6th December 1798, I. 17
2. A Mahomedan cannot alienate by will more than one-third of his property from his heirs. *Kishwur Khan versus Jewun Khan*, 9th August 1799, .. .. I. 25
3. Legacies by Mahomedan law are restricted to one-third of the testator's property, the remaining two-thirds not being alienable from the heirs at law. *Ruzia Begum versus Aga Mahomed Ibrahim*, 8th August 1807, .. .. I. 150
4. *Wuqf* property, or lands appropriated to pious purposes, are not capable of being privately alienated, or resumed. *Kulb Ali Hosun versus Syf Ali*, 17th March 1814, .. .. II. 110
5. *Musst. Kadura versus Shah Kubeeroodeen Alnud*, 24th August 1821, III. 407
6. A will upheld by which a Mahomedan female bequeathed the whole of her property to a stranger: had the testatrix left objecting heirs, two-thirds would have gone to them, and one-third to the legatee. *Mahomed Ameenoodeen and another versus Mahomed Kubeeroodeen*, 31st March 1825, .. .. IV. 49

#### APOSTACY.

1. Apostacy from the Mahomedan faith, if subsequent to the devolution of hereditary property, does not deprive the apostate of his right of succession. *Wujeh-o-nisa Khanum versus Mirza Husun Ali*, 30th December 1808, .. .. I. 268

#### BEQUESTS.

1. If the trustee of a *Mahomedan* religious endowment [there being no special provision for his successor] on his death bequeath the trust to



his sons, such bequest is good according to Mahomedan law; and the sons are entitled to the superintendence jointly, and to the lawful profits accruing from it, and not subject to confirmation of the ruling power, or removable *quam diu se bene gesserint*; but on proof of misconduct, or breach of their trust, the ruling power shall appoint another or others in their room. Mahomed Sadiq *versus* Mahomed Ali and others, 6th December 1798, . . . I. 17

2. A verbal bequest of property, real and personal, is valid in Mahomedan law, as far as one-third of the property of the bequeather; two-thirds falling necessarily to the heirs at law. Kishwur Khan *versus* Jewun Khan, 9th August 1799, . . . I. 25

3. Legacies by the Mahomedan law are limited to 1-3d of the testator's property, exclusive of funeral charges and debts; 2-3ds not being alienable by will from the heirs at law. Ruzia Begum *versus* Aka Mahomed Ibrahim, 8th August 1806, . . . I. 150

4. A Mahomedan having obtained a grant of a *muddud mash* estate, in the substituted, or *furzee* name of a female relative, [with the apparent intention of enabling her to take the estate at his death,] held this is of no avail under the Mahomedan law against the right of the heirs of the grantee. The estate was held to be divisible according to the Mahomedan law of inheritance. The grantee could not by a testamentary disposition have bequeathed more than one-third from the heirs at law. Sheikh Buhador Ali *versus* Sheikh Dhomon and others, 8th August 1808, . . . I. 250

5. A Mahomedan *fukcer* having appointed defendant his *janusheen*, or successor, with the apparent intention of bequeathing to him his estate; the bequest was upheld to the extent of one-third of the estate, the other two-thirds were adjudged to the legal heirs of the deceased. Musst. Soobhancee *versus* Bheetun alias Shah Azim Ally, 11th September 1811, . . . I. 346

6. A will upheld, by which a Mahomedan female bequeathed the whole of her property to a stranger: the testatrix having no heirs, the legatee took the whole of the property. Had she left objecting heirs, two-thirds of the property would have gone to them, and one-third to the legatee. Mahomed Ameenooddeen and another *versus* Mahomed Kubeeroodeen, 31st March 1825, . . . IV. 49

7. A *Hindu* was appointed executor to the will of a Mahomedan. The law officer of the Sudder Dewanny Adawlut declared that the *cazee* might displace him; but that till regularly displaced, the whole of his official acts are valid. *Ibid*, . . . IV. 49

8. The appointment by a *Mussulman* of a *Christian* as his executor does not invalidate the will containing such provision, nor does the demise of that executor, and the failure of the testator to appoint another in his room, imply the annulment of the will. H. Imlach and others *versus* Musst. Zuhoor-o-nissa Khanum, 28th January 1828, . . . IV. 301

9. The testament of a *Moslim* was declared null under the Mahomedan law, because he made a partition among his heirs, giving some a preference which the law did not give. Hedayat Ali Khan and another *versus* Musst. Tajan and others, 4th April 1833, . . . V. 287

10. Under the Mahomedan law, a will in favor of one son, or of one heir, cannot take effect to the prejudice, and without the consent of the other sons and other heirs. Syed Lutf Ali and another *versus* Musst. Wasaum, 25th April 1837, . . . VI. 159

#### BROTHER [FULL BLOOD.]

See 'Inheritance,' Nos. 15, 23, 36, 37, 41, 48, 49.

#### BROTHER [HALF BLOOD.]

See 'Inheritance,' No. 52.

BROTHER'S SON.

See 'Inheritance,' No. 47.

BYE-TULJEEH.

See 'Pre-emption,' Nos. 17, 18.  
'Sales,' Nos. 14, 15, 20.

BYE MOKASA.

See 'Dower,' 34.

CEMETERY.

See 'Endowments,' No. 18.

COHABITATION.

See 'Dower,' No. 19,  
'Marriage,' No. 9.

COLLATERAL KINSMEN.

See 'Inheritance,' No. 15.

COMPOSITION FOR HOMICIDE.

1. Composition for homicide is allowed by the Mahomedan law; and the agreement for it becomes a binding contract [Hedaya, Vol. IV. p. 99.]  
Nunda Singh *versus* Meer Jafer Shah, 10th April 1794, .. .. I. Note. 5

CONCUBINE.

See 'Inheritance,' No. 59.  
'Marriage,' No. 8.

CONTRACT.

1. Under the Mahomedan law, in a commutation of money for money, delivery must be immediate. It is essential to the validity of a contract of exchange, that the subject of it, and the consideration be distinctly specified. Musst. Rabca Khatoon and another *versus* Budr-o-nissa, 28th December 1841, .. .. VII. 62

CONSUMMATION.

See 'Dower,' Nos. 8, 17, 27, 28.

CONVEYANCE.

See 'Conveyance,' No. 1, Part I. General.

COUSINS.

See 'Inheritance,' No. 5.

DAUGHTERS.

See 'Inheritance,' Nos. 5, 15, 19, 23, 30, 32, 37, 39, 40, 41, 42, 43, 45,  
49, 50, 51, 56, 57, 58, 60, 61.

## DAUGHTER'S SONS.

See 'Inheritance,' No. 5.

## DEBTS.

1. By the Mahomedan law a creditor of a husband cannot recover against a wife from assets which came into her hands by gift from her husband. *Ruzia Begum versus Aka Mahomed Ibrahim*, 8th August 1806, .. .. . I. Note. 152
2. A *Mussulman* widow held not to be liable for her deceased husband's debts, she not having derived any property from him. *Noor Jehan Begum versus Premsookh*, 6th June 1826, .. .. . IV. 161

## DECREES.

See 'Decrees,' No. 6, Part I. General.

## DEEDS.

1. A deed of marriage settlement having been rejected as spurious, the rejection was held not to preclude an action by the widow to establish her claim as dower creditor. *Musst. Oomda Begum versus Musst. Hoseene Begum*, 15th March 1831, .. .. . V. 98
  2. A deed containing provision in direct contravention of express ordinance of *Moslim* scripture [by which the grandfather granted after his death an hereditable right on his estate to his grand daughter, from which she was excluded by the prior death of her father,] is void and ineffectual under Mahomedan law. *Mahomed Yacoob versus Wujeh-o-nissa*, 28th January 1833, .. .. . V. 262
- See 'Deeds,' No. 2, Part I. General.

## DIVISION.

See 'Gift,' No. 15.

## DIVORCE.

1. By the Mahomedan law divorce is not demandable as a right by the wife on payment of a consideration; and the husband may recover by civil action the person of his wife. *Moulvee Abdool Wuhab versus Musst. Hingoo and another*, 5th May 1832, .. .. . V. 200
- See 'Dower,' Nos. 17, 18.  
'Marriage,' Nos. 6, 7.

## DOWER.

1. The widow of a Mahomedan claims the estate of her husband, who died 26 years before, under a gift from him in lieu of dower, [*hibeh-bil-ewuz*] dated two years before he died. There had been no possession on her part since his death; and her son, in the interval by her directions, had sued and obtained judgment as heir to his father's estate. Such having been the case, the law officers hold that the widow is estopped from claiming under a gift from her husband; though she may come in for her share as one of his heirs. *Meer Nujeeboollah versus Musst. Kuseema*, 18th November 1795, .. .. . I. 10
2. A widow takes her share in the estate of her deceased husband, in addition to dower. *Newaza Ferash versus Musst. Atlussee and another*, 26th November 1800, .. .. . I. 31

3. A gift in lieu of dower is not invalidated by the marriage, on occasion of which the dower was settled, proving illegal, by the return of the wife's first husband, supposed to have been dead. *Ibid.* .. I. 31

4. Claim by plaintiff for half of his father's estate. The deceased had settled on the defendant's mother a dower of 3,00,000 *gold mohurs*, which at her death (before her husband) was demandable by her heirs: the husband, as one of these heirs, takes 10 *annas* of her property [i. e. the dower due], and the defendant, her son, 6 *annas*. These 6 *annas* of the dower were now demandable by the defendant from the paternal estate; and as the amount was greater than the whole estate, and claims of dower must be satisfied before partition of heritage, the Sudder Dewanny Adawlut adjudged that the plaintiff's right of inheritance will not avail. *Gholam Husun Ali versus Zeinub Beebee*, 20th July 1801, .. I. 48

5. At the suit of the widow against the brother of her husband for her husband's estate, under a deed making a gift to her of all his property in lieu of dower, adjudged that the widow is entitled under the deed to take all the property possessed by the husband at the date of it; and, in the property subsequently acquired, had a right to share as an heir. *Musnud Ali versus Koorshed Banoq*, 14th August 1801, .. I. 52

6. The widow of a Mahomedan declared his landed estate to have been given by him in his lifetime to a grandson, in whose favor she fabricated a deed of gift from her husband; which deed was set aside in a suit brought by one of the heirs against the grandson. Afterwards, at the suit of the widow for the lands, in satisfaction of dower, as being the estate left by her husband, which the defendant admits they were, and pleads that the widow had remitted her dower; the law officers declared the claim barred by estoppel, because the widow by her allegation of the gift had virtually declared that the lands were not the estate left by her husband, and could not now claim them as being so. The Sudder Dewanny Adawlut doubt the application of the doctrine to the case; but on the presumption arising from the widow's declaration of the gift, that she must have remitted dower, dismiss the suit. *Beebee Munwan versus Meer Nusrut Ali*, 6th June 1803, .. I. 64

7. Judgment for the daughter of a deceased Mahomedan against the male relatives in possession of his estate, for a half share of the dower of her mother, unpaid during the life of the mother whom the father survived; such dower being in law the mother's estate, recoverable by her heirs from the property of her husband. *Ali Buksh Khan versus Kaem Beebee*, 24th August 1804, .. I. 83

8. Dower is due on the consummation of marriage, unless deferred by the terms of the settlement to a future period; and after the death of the parties, the heirs of the wife are entitled to take the dower out of the husband's estate, deducting the husband's portion as one of his wife's heirs, if she die before him. *Ibid.*, .. I. Note. 84

9. Claim of respondent to dower. Recovery of 1-3d of it, *mowujjul*, or payable on her marriage 40 years before, barred by lapse of time; but judgment given for the remaining 2-3ds, *mowujjul* [not exigible during continuance of marriage,] payable on the death of the husband, which happened only 6 years before the action. *Meer Nujeeboollah versus Musst. Door-dana Khafoon*, 21st August 1805, .. I. 103

10. Claim by the heirs of a widow to a *talook*, as having belonged to her, adjudged on proof of her title to it; her husband having made it over to her at his death, in satisfaction of dower, settled upon her at her marriage; and she having held it till her death [33 years], without her title being disputed by any of her husband's heirs. *Mirza Mahomed and another versus Jareutooz Zohra Begum and others*, 22d July 1808, .. I. 243

11. Claim by the heir of a person deceased, against his widow for a share of his estate, which she took in satisfaction of dower. The principal

ground of the claim (viz. that the amount of the dower, which absorbed the whole estate, was *excessive*, and therefore illegal) rejected by the Sud-  
der Dewanny Adawlut, and judgment given dismissing the claim. Wujeh-  
o-nissa Khanum *versus* Mirza Husun Ali, 30th December 1808, .. I. 266

12. Dower due to a widow on her husband's death, is payable in pre-  
ference to all other claims of inheritance. Ibid, .. I. Note. 268

13. Landed or other immovable property left by the husband, cannot  
be taken by the widow in satisfaction of her claim of dower, without the  
consent of the heirs, or competent judicial authority; but movable pro-  
perty may be taken by her, as far as the heirs are concerned, but not to  
the prejudice of other creditors, in payment of dower indisputably due.  
Ibid, .. I. Note. 268

14. One of the heirs of the husband having for several years acted as  
manager for his widow, who had taken possession of her husband's landed  
estate in satisfaction of her dower, while none of the other heirs preferred  
any claim to the estate, may be considered as sufficient evidence of consent  
on part of the heirs to the widow's right. Ibid, .. I. Note. 268

15. In a suit by a wife against her husband, both of the *Sheea* sect of  
Mahomedans, for her dower, it appearing that the sum of 500 rupees was  
verbally specified at the reading of the ceremony in the *Sheea* form, but that  
a deed of settlement was executed by the husband for 1,00,015 rupees, ad-  
judged that the sum specified in the deed was legally demandable. Omdut-  
o-nissa *versus* Mirza Usud Ali, 19th May 1809, .. I. 276

Rahut-o-nissa *versus* Heirs of Mirza Hezubr Beg, 15th November  
1816, .. II. 198

16. By the *Soonée* doctrine of *Huneefa*, the extent of dower is not limit-  
ed: the parties may extend it by agreement to what amount they please;  
ten *dirhems* is the lowest rate. Among the *Sheeas*, the lowest and highest  
rate is not fixed: any thing possessing a legal value may be given as dower;  
but the proper dower is 500 *dirhems*. Omdut-o-nissa *versus* Mirza Usud  
Ali, 19th May 1809, .. I. 277

17. Dower becomes exigible [*mowujjul*] from the time of the contract,—  
that is the mutual agreement of the parties contracting the marriage; but  
as one-half of the dower may become forfeited by divorce before the mar-  
riage has been consummated, it becomes certain and absolute by the act of  
consummation; by *khlwuti suheeh*, or the privacy of the parties, unattended  
with any disability either natural or legal, from which that act is presumed;  
or by the death of one of the parties. Ibid, .. I. 278

18. It is the custom to make one-half, or one-third of the dower *mowujjul*,  
or demandable immediately, and the remainder *mowujjul*, or payable at a  
future period: the payment of the former part would be immediate; the  
latter becomes payable on divorce, or death. Ibid, .. I. 278

19. If the wife, being in the house of her mother, do not allow the ac-  
cess of her husband, dower is not forfeited; the husband is only exempted  
from the charge of her maintenance. Ibid, .. I. 278

20. At the suit of an heir of the son of A, against the widow of A, for a  
share of his estate, as joint heir with the widow, to which the widow plead-  
ed that the whole estate fell to her in satisfaction of dower: there being  
proof that she had received in part of her dower the property possessed by  
the husband at his marriage, and had afterwards remitted her claim to the  
residue, under such circumstances the property acquired by A, after mar-  
riage, declared to be his estate hereditary by his heirs; and judgment  
given for the claimant's obtaining the share due to him as heir of the son of  
the deceased. Ahmud Oolla and another *versus* Behar Ullah, 7th August  
1809, .. I. 284

21. An assignment in lieu of dower, of property which he did then or  
might afterwards possess, being the offer of an equivalent, part of which

did, and part did not then exist, is void in law. *Ahmud Oolla and another versus Behar Ullah*, 7th August 1809, . . . . . I. 286

22. A *kabeen-nameh*, or deed of marriage settlement, by a husband to his junior wife for a moiety of his estate, held to be of no avail in law, it appearing that he had previously settled his entire estate on his senior wife; and that the deed in question had been executed without her permission duly obtained. *Musst. Banoo Beebee versus Fukherooddeen Hussein*, 3d May 1816, . . . . . II. 180

23. In a marriage of two minors, the legal guardian of the husband not having been present at the marriage, and not having given his consent to the dower, and the husband, on coming of age, not having confirmed his acknowledgment of the dower, adjudged that the dower is not demandable from the husband. *Kureem-o-nissa versus Ruheem Ali*, 8th March 1817, II. 233

24. A claim having been preferred against the widow of a *Mussulman* by his sister, for half the property left by him, which was finally adjudged to be the widow's right in lieu of dower; and 21 years after that decision, the same plaintiff having brought an action against the same defendant for half of the same property, on the plea that supposing the dower to have amounted to the sum claimed, she had realized the full amount from the profits of the estate, it was held that the claim is inadmissible. *Sahib Jan Khatoon versus Dianut Beebee and others*, 9th February 1820, . . . . . III. 12

25. The heir of a widow claims her dower from her late husband's estate, under a deed executed by him before the Company's accession to the *Dewanny*; held that the claim is inadmissible, the truth of the demand not having been acknowledged within 12 years prior to the institution of the suit. *Mahomed Yar Khan versus Mahomed Eesan Khan*, 6th January 1824, . . . . . III. 292

26. On a claim to certain lands in satisfaction of dower, there being no other assets, the Court will award possession of them to the widow, if they do not exceed in value her proper dower, or such as is proportionate to the rank and circumstances of her family, although no deed of dower may be forthcoming. *Uzeez-o-nissa versus Kulub Ali Khan and others*, 25th March 1824, . . . . . III. 321

27. A verbal contract for dower is valid by the *Mahomedan* law; and the law officers of the *Sudder Dewanny Adawlut* declare that a minor, being adolescent, may legally contract for the same. Unless the contrary be specified, it is prompt; and, till paid, cohabitation cannot be enforced. *Abdul Kareem versus Musst. Fazilat-o-nissa*, 13th December 1830, . . . . . V. 75

28. If consummation be not presumable, only half dower is claimable from the husband. *Ibid*, . . . . . V. 76

29. A's suit against B (the widow of a *Moslem*) for his legal share of the deceased's estate, is repelled by B, by a plea of dower due to her under a deed of settlement, which exhausted the assets. The deed appearing spurious, A's claim is decreed, without prejudice to the action of B to establish her claim as dower creditor. *Musst. Oomdah Begum versus Musst. Hoseinee Begum*, 15th March 1831, . . . . . V. 98

30. The heirs of a *Moslem* recovered their shares of his estate, against his widow, who had taken the same. Her plea of set off for dower debt was not then tried, and she was referred to her civil remedy in that regard. Under these circumstances, in her action subsequently brought against the heirs, she recovers her claim; the lapse of more than 12 years from the date of right notwithstanding. *Sheikh Beebee versus Ranees Buksh Beebee*, 24th March 1831, . . . . . V. 105

31. A, a *Moslem*, assigned to his wife B, by a deed in satisfaction of dower, whatever zemindaree, properties, and personal effects he owned and

held. The Sudder Dewanny Adawlut, on the *futwa* of their law officer, ruled that the quantity of the consideration being undefined and unknown, the deed was inoperative. *Aiman Beebee versus Ibrahim Khan*, 9th May 1833, .. V. 304

32. A *kabeen-nameh*, or deed of marriage settlement, containing a gift by a husband to his wife of the whole of the property possessed by him and which hereafter might come into his possession, is valid under the Mahomedan law in regard to the property in actual possession of the husband, but not in regard to that which is non-existent. *Oojudhea Beebee versus Mohun Beebee* and another, 30th June 1835, .. VI. 30

33. Held that under the Mahomedan law, a deed of gift of real property, legally executed, is valid against a deed of dower of a prior date executed by the same individual in favour of his wife, in which a sum of money is specified as dower without mention of a pledge of real property as security for the dower debt. *Musst. Suffur-o-nissa versus Ayesha Beebee*, 18th July 1837, .. VI. 177

34. A Mahomedan settled certain property, but without specification, upon his first wife in lieu of dower. On her death he married a second wife, to whom he executed a deed of *bya-mokasa*, or barter of a portion of the same property in lieu of the dower settled upon her. Declared by the chief *cazee*, that if the property had been separated from the husband's estate and transferred to the possession of the first wife before the second marriage took place, the *bya-mokasa* is invalid; but valid, if no such separation had taken place. *Sheikh Futteh Ali versus Musst. Janwa*, 18th July 1837, .. VI. 178

35. In an action for dower by the widow against the heirs of a deceased Moslem, the Court held, under the circumstances, that the acknowledgment of one of the heirs of the justice of the claim was insufficient for a verdict even against the party making it. *Beebee Saheebun versus Beebee Hingun* and another, 18th May 1841, .. VII. 31

36. The widow of a deceased Moslem cannot take possession of his real estate in lieu of dower without the consent of the heir, or a judicial decree. *Musst. Wuzcerun versus Mahomed Hossein Khan. Musst. Wuzcerun versus Musst. Khyrun* and others, 7th June 1841, [But see note,] .. VII. 34

37. In a suit by a Mahomedan wife against her husband, recovery of exigible dower barred by lapse of time. Dower not exigible is not recoverable until the death of the husband, or the dissolution of the marriage by divorce. *Noorunnissa Begum versus Nawaub Syed Mohsin Allee Khan Bahadoor*, 26th June 1841, .. VII. 40

38. By the Mahomedan law, a *kabeen-nameh*, or deed of marriage settlement, is invalid in respect to property not in the possession of the husband at the time of the execution of the deed. *Noor Buksh Chowdree versus Mahomed Arif Chowdree*, 10th March 1843, .. VII. 123

### ENAAAM.

See 'Endowments,' No. 14.

### ENDOWMENTS.

1. If a Mahomedan assign property for a pious endowment, and he [or his executor on his part] appoint a trustee, and such trustee [there being no special provision for his successor] on his death-bed bequeath the trust to his sons, the bequest is good in law; and the sons are entitled to the superintendence jointly, and to the lawful profits accruing from it, not subject to the confirmation of the ruling power, nor removable *mandi se*.

- bene gesserint*; but on proof of misconduct, or breach of their trust, the ruling power shall appoint another, or others, in their stead. Mahomed Sadik *versus* Mahomed Ali and others, 6th December 1798, . . . I. 17
2. *Wuqf* implies the relinquishment of right in any article of property, such as lands, tenements, and the rest; and consecrating it in such a manner to the service of God that it may be of benefit to men, provided always that the thing appropriated be, at the time of appropriation, the property of the appropriator. *Towlent* implies the assignment of the thing appropriated by the appropriator, for the purpose of such person's applying it in the manner designed. Ibid, . . . I. 18
3. The appointment of a trustee, or superintendent, is vested in the appropriator; on his demise, in his executor; or, if he have left no executor, in the ruling power. Ibid, . . . I. 18
4. The superintendent cannot appoint his successor during health, unless he has obtained the trust with such a power. Mahomed Sadik *versus* Mahomed Ali and others, 6th December 1798, . . . I. 18
5. Claim of the respondent to the superintendence [*sujadeh nusheenee*] of a religious establishment, and management of the endowed lands. Judgment in his favor, with a reservation of his obtaining a *sunnd* from Government. Musst. Hy-a-o-nissa and another *versus* Mofukhir-ool Islam, 17th September 1805, . . . I. 106
6. The offices of principal of a religious institution, and of trustee and manager of the lands, having been reserved by the original assignment for lineal descendant of the founder, [lineal descent intending the male line] a female descendant in the male line is disqualified by sex for one of the offices. Musst. Hy-a-o-nissa and another *versus* Mofukhir-ool Islam, 17th September 1805, . . . I. Note. 107
7. The appellant's claim to hold the lands as an endowment on the tomb of a Mussulman saint disproved: division of the estate among the heirs was decreed. Meer Nusrut Ali *versus* Meer Casim Ali, 17th September 1805, . . . I. 108
8. On a claim by A, a female, against B and C, for possession of certain lands, as trustee of a religious establishment, it being proved that the lands had been assigned for an endowment, but that the person who assigned them, and settled the trusteeship on the claimant, was proprietor of only an 11 annas' share of them, the endowment upheld for that proportion only, and possession adjudged to the trustee. Musst. Hyatee Khanum *versus* Musst. Koolsoom Khanum and another, 4th September 1807, . . . I. 214
9. It is legal for a female to be trustee according to all the authorities. Ibid, . . . I. 214
10. The assignment of an undefined share as a pious endowment, held valid by the *fatwa* of the law officers, on the authority of Aboo Yoosuf, and a series of *fatwa*, or legal expositions. Ibid, . . . I. 214
11. To constitute a *wuqf* or pious appropriation, it is not required by the Mahomedan law that the grant should be express in the use of that term; provided the nature of the tenure be inferrible from the general contents of the grant. Kuli Ali Hoosun *versus* Syf Ali, 17th March 1814, . . . II. 110
12. *Wuqf* lands are not capable of alienation. Ibid, . . . II. 110
13. The respondent, as *sujadeh nusheen*, or superior of *khanqah*, or religious endowment, sued to obtain possession of certain lands as appropriated to the endowment. The provincial court setting aside as invalid certain deeds by which his predecessor had made over the *lakhiraj* villages to his wife, decreed the *lakhiraj* villages to respondent; and also certain *khirajee* villages, as having been acquired from funds arising from the *wuqf* lands. The Sudder Dewanny Adawlut confirmed the decree as regarded the *lakhiraj* villages; but, reversing that part which related to the *khirajee*



villages, it not being clearly proved that they were acquired by funds arising from the *wuqf* land, decreed restoration thereof, with meane profits during the period of dispossession under the provincial court's decree, to the appellant. *Musst. Kadera alias Musst. Usmut versus Shah Kubeeroodeen Ahmud*, 24th August 1824, .. .. . III. 407

14. By the use of the term *enaam* in a royal grant, it does not necessarily follow that the property specified is conveyed in absolute proprietary right, if from the general tenor of the instrument it may be inferred that a *Wuqf*, or religious endowment was intended. *Ibid*, .. .. . III. 407

15. Property once appropriated as *wuqf*, cannot be resumed or alienated. *Ibid*, .. .. . III. 407

16. A valid endowment may be verbally constituted, without any formal deed: and though the witnesses to the fact depose vaguely, yet their evidence [corroborated by circumstances] is legally sufficient. The endower cannot afterwards alienate the property appropriated. *Abool Husun alias Madho Shah versus Khajah Mahomed Maseh Kerbulai*, 17th February 1831, .. .. . V. 87

17. Several *Moslem* brothers had lived joint in state and abode: and where one had sued for partition, charging as part of the joint estate certain *peerooter* lands in the ministry of the elder brother, the law officers [assuming that he had dedicated the same] declare that the curatorship will follow his appointment, and, failing that, the selection of Government; and that the joint state of the brotherhood establishes no pretensions on behalf of the other brothers. *Mahomed Kasim and another versus Mahomed Alum and others*, 30th July 1831, .. .. . V. 133

18. A general dedication of land for the purpose of a cemetery, establishes *wuqf*, and excepts the same from descent to the heirs; but the existence of tombs on land, does not bar partition among heirs, except as to the actual spot covered by the tombs. *Meer Noor Ali versus Musst. Majideh and others*, 30th July 1831, .. .. . V. 136

19. The office of curator of a trust is not hereditary; and the claim of A. to be considered as a curator on an alleged appointment by his father, [one of two curators originally appointed by the endower,] and asserted improper removal by the Board, under Regulation XIX. of 1810, is disallowed. It appeared that the appointment, if genuine, had never taken effect, the father having continued to act after its date; and that it ~~never~~ had been confirmed by the proper authorities.

*Wasik Ali Khan versus Government*,

*Torah Ali Khan versus Curator of the Hooghly Endowment and Collector of Jessore*,

*Collector of Jessore and Curator of Hooghly Endowment versus Torah Ali Khan*, 29th November 1834, .. .. . V. 363

20. Where by the deed of endowment, the selection of a successor is committed generally to two co-curators of whom ~~one is~~ dead, the selection of the survivor, under the Mahomedan law, is not valid, without the approbation of the ruling power. *Ibid*, .. .. . V. 368

21. By the Mahomedan law, the manager of a trust, whether he acts as curator or as executor, is equally removable by the ruling power, if he be suspected, or if for the good of the trust. *Ibid*, .. .. . V. 368

22. Under Section 15, Regulation XIX. 1810, a curator removed by the Board of Revenue, on the ground of misconduct, may bring an action to try the sufficiency of that ground. *Ibid*, .. .. . V. 370

23. Property belonging to an endowment is not liable to claims of inheritance, and the office of *sujadeh nusheen* cannot be held by a woman. *Shah Imaim Buksh versus Musst. Beebee Shahee and others*, 5th March 1835, .. .. . VI.

24. The zillah court having held that the *mootuwallee*, or trustee, of a religious endowment, who had been ejected from the trusteeship by the revenue authorities on proof of corruption, could not sue for restoration to the office, it was held by the Sudder Dewanny Adawlut that such suit was cognizable by the civil court. *Wasiq Ali Khan versus Government*, 22d September 1836, . . . VI. 110

25. The plaintiff in the above case, alleging that he had been illegally ejected by the revenue authorities, sued for restoration to the office of trustee, in virtue of a *tauleentnameh* executed by the then *mootuwallee*, who had himself been appointed under a testamentary trust with power to nominate his successor. The Sudder Dewanny Adawlut being of opinion that the plaintiff never had been in possession of the trust under the deed of nomination and appointment in his favor, dismissed his claim; but recorded their opinion that, subject to the decision of Government, the plaintiff had the best claim to the trusteeship. *Ibid.*, . . . VI. 110

26. Dictum. That a *mootuwallee* appointed under a testamentary trust, with power to nominate a successor, cannot, under Regulation XIX. 1810, appoint such successor without the consent of the revenue authorities; but point not ruled. *Ibid.*, . . . VI. 110

27. The alienation, temporary or absolute, by mortgage or otherwise of *wauqf* lands, though for the repair or other benefit of the endowment, is illegal according to the Mahomedan law. *Moulvee Abdoolla versus Musst. Rajesri Dossia and another*, 19th July 1846, . . . VII. 268

See 'Practice,' 72.

'Ryuttee Holdings.'

## ENGAGEMENTS.

See 'Gifts.'

## ESTOPPEL.

1. A person pleads a will, and, that being rejected as a forgery, afterwards pleads a gift, which she had formerly denied. Such plea is estopped by repugnancy [*tenakuz*] in Mahomedan law. *Bhannoo Beebee versus Imam Buksh*, 5th August 1803, . . . I. 68

2. A plaintiff having denied that the defendant was a daughter of the deceased proprietor, and, on her death, having admitted it and claimed the estate as her heir, such claim is estopped in Mahomedan law on the ground of *tenakuz*, or repugnancy. *Shah Abadee versus Shah Ali Nukee*, 12th October 1803, . . . I. 73

3. The plaintiff, a Hindoo woman, first denied her conversion to Mahomedanism, but subsequently claimed the property of a deceased Moslem as his widow and heir at law: claim estopped by reason of repugnancy. *Musst. Chootum versus Ramzan Allee and another*, 15th March 1841, . . . VII. 20

See 'Dower,' Nos. 1, 6.

## EVIDENCE.

1. According to Mahomedan law the modes of establishing a gift are three, viz. by the evidence of credible witnesses,—by the admission of the defendant,—or by his declining to make oath to his denial. *Nunda Singh versus Meer Jahier Shah*, 10th April 1794, . . . I. 5

2. What evidence is required in Mahomedan law to prove a marriage. [See 'Marriage,' No. 3.] *Gholam Husun Ali versus Zeinub Beebee*, 20th July 1801, . . . I. 49

3. In testifying to a fact, it is necessary, in general, that the witness has personally known it; but in questions of genealogy, marriage, and certain other matters, hearsay may suffice, provided the witness have the means of knowing the fact correctly from general local report, or particular credible communication. *Ibid*,... .. I. 50
4. According to the maxims of Mahomedan law, the person denying a claim may be required to make oath to the denial, and the refusal to do so is a confession of the demand. In a case where the person who defended an action, set up a claim founded on certain documents exhibited by him, he is considered as claimant; and the oath could not properly be tendered to him, but to the opposite party. *Beebee Jugun versus Baker Ali and others*, 7th May 1804,... .. I. Note. 82
5. According to the rules of Mahomedan law, the plaintiff must produce evidence to prove his claim on the simple denial of the defendant; but when any special plea is urged, the *onus probandi* rests with the defendant. *Hukeem Wahid Ali versus Khan Beebee*, 6th August 1821, III. 102
6. Conjectural evidence is not admissible in Mahomedan law; for it is necessary that a witness should possess firm belief. *Ibid*,... .. III. 105

## EXCLUSION.

See 'Inheritance,' Nos. 23, 30.

## EXECUTORS.

1. An executor may appoint a superintendent of an endowment on the demise of the appropriator. *Mahomed Sadik versus Mahomed Ali and others*, 6th December 1798,... .. I. 17
2. The widow of an executor, who pleaded the gift and possession of her husband's estate in satisfaction of her dower, was made answerable for paying out of the property so received by her, the money due to the heirs of an estate to which her husband administered. Judgment founded on the opinion of the Mahomedan law officers, that the husband had no right to give away what was not his own; and that the donation of property in his hands, as executor, could not, therefore, bar an action for the recovery of it. *Ruzia Begum versus Aka Mahomed Ibrahim*, 8th August 1806,... .. I. 150
- See 'Bequests,' Nos. 7, 8.

## FAMILIES UNDIVIDED.

See 'Endowments,' No. 17.

## FATHER.

See 'Inheritance,' Nos. 6, 45.

## FATHER'S BROTHER.

See 'Inheritance,' No. 38.

## FATHER'S BROTHER'S SON.

See 'Inheritance,' No. 5.

## FUKEER.

See 'Bequests,' No 5.

## GIFT IN LIEU OF DOWER.

See 'Dower,' Nos. 1, 3, 5, 10, 21, 33.

## GIFTS.

1. Gift depends upon tender and acceptance; and seisin is necessary to make it complete. *Nunda Singh versus Meer Jafier Shah*, 10th April 1794, .. I. 5
2. A gift to a stranger may be retracted in the lifetime of the parties, provided no consideration has been given, unless an improvement or increase have been incorporated in the thing, and it have not passed into other hands. *Ibid.*, .. I. Note. 6
3. To give validity to a *hibeh-bil-ewuz*, or gift for consideration, which is in effect a sale, seisin is not requisite in Mahomedan law. *Meer Nujeeboolla versus Musst. Kuscema*, 18th November 1795, .. I. 10
4. *Hibeh-ba-shurt-ool-ewuz* is a contract distinct from *hibeh-bil-ewuz*. *Ibid.*, .. I. 10
5. In a suit for lands, to which defendant pleaded a title under a gift from his wife lately deceased, made some years before her death, the question was whether there had been possession under the gift, sufficient to give it validity in Mahomedan law. The law officers declare, that delivery of seisin was sufficient, and continued possession was not necessary. *Jafier Khan versus Hubshee Beebee*, 31st March 1796, .. I. 12
6. A gift of land, forming part of joint property, to be valid, must be distinct, and the boundaries and extent of the property given be known. *Ibid.*, .. I. 12
7. The gift of a portion of landed property, without distinct allotment of it, and delivery of seisin to the donee, is not valid in Mahomedan Law. *Azmoodeen versus Fatima Beebee*, 27th June 1799, .. I. 24  
*Kishwur Khan versus Jewun Khan*, 9th August 1799, .. I. 25  
*Casim Ali versus Furzund Ali*, 27th November 1805, .. I. Note. 115
8. A deed of gift by a father to his minor son, of property of which possession was not delivered at the time of gift, or during the father's lifetime [about four years beyond the date of it,] held valid in Mahomedan law; for the son being a minor, it was presumed that the father was trustee for him. *Newazee Ferash versus Musst. Atlussee and another*, 26th November 1800, .. I. 31
9. A thing not existing cannot be the subject of a gift. *Musnud Ali versus Khoorshed Banoo*, 14th August 1801, .. I. 52
10. The authorities differ as to the validity of a joint gift, without discrimination of shares. According to *Aboo Huneefa*, it would be invalid; but the *Two Disciples* admit its validity. It would however not be valid for property included in, or inseparably attached to that of another person, so as to be undefined. [In the present instance the gift was set aside, in consequence of there having been no possession on part of the donee during the lifetime of the donor.] *Casim Ali versus Furzund Ali*, 27th November 1805, .. I. Note. 115
11. The donation of a man's estate to his widow in lieu of dower, does not bar the recovery of property held by him as executor. *Ruzia Begum versus Aka Mahomed Ibrahim*, 8th August 1806, .. I. 125
12. A deed of gift by a female to a minor, whom she had received into her family as an adopted son, of property of which possession was not

delivered at the time of the gift, or during the lifetime of the donor, who retained possession of it on behalf of the minor, held to be valid and complete in law, notwithstanding that the father of the minor was alive: but the claim to a portion of a joint undivided estate under that instrument rejected, the gift of such property being invalid in Mahomedan law. Musst. Banoo Beebee and another *versus* Fukherooden Husun, 3d May 1816, . . . . . H. 180

13. It is a well known maxim of Mahomedan law, that to render a gift valid it is necessary that the subject of it be defined, and distinct and separate from other property not intended to be conveyed, or which cannot lawfully be conveyed by gift. In the case of a gift of twelve portions, four of these having been reserved for religious purposes could not legally be transferred by gift. Consequently the gift of the eight portions could not be upheld, as they were transferred simultaneously with the four portions, the transfer of which was illegal. Meer Ubdool Kureem *versus* Musst. Fakhur-o-nissa Begum, 2d August 1820, . . . . . III. Note. 44

14. Held that the Mahomedan legal objection of indefiniteness does not apply to a gift under which possession has been held upwards of 12 years. Syud Shah Basit Ali *versus* Syud Shah Emamooddeen, 19th November 1822, . . . . . III. 176

15. In a gift of partible property to two persons, division is essential prior to delivery. Musst. Khanum Jan *versus* Musst. Jan Beebee and others, 13th February 1827, . . . . . IV. 210

16. A father by two separate deeds had sold his property to his son, and made over to him the purchase money as a free gift. The provisions of the contract never having been carried into effect, and the sale being invalid under the Mahomedan law, as of the kind denominated *Bye-i-tuljeeh*, it was held by the Sudder Dewanny Adawlut to be null and void. Musst. Hingoo *versus* Meer Furzund Ali and another, 5th April 1828, . . . . . IV. 307

17. By the Mahomedan law, as received by the *Shea* sect, the gift of an aliquot part of an undivided estate is valid. Mirza Kasim Ali *versus* Mirza Mahomed Husun, 29th May 1832, . . . . . V. 213

18. A sued B [both *Moslems*] for a share of certain properties, under a deed of gift for a consideration executed by B's mother. B alleged that a forged deed in this form had been substituted, for a gift in the ordinary form; because the latter was vitiated by confusion and defect of possession. He further alleged, that the consideration was fictitious. The Sudder Dewanny Adawlut decrees the claim of A, on proof of the deed; and did not try the fact of consideration. Syud Hosein Ali Khan *versus* Fuzooddeen Haidar, 28th November 1832, . . . . . V. 239

19. The civil law of the Arabian schools recognises distinction between gift for a consideration, [*Hibeh-bil-ewuz*] and gift on consideration of a return, [*Hibeh-ba-shurt-ool-ewuz*]. The latter is, the former is not vitiated by confusion and non-possession. Imdad Ali *versus* Kadir Buksh and others, 24th April 1833, . . . . . V. 296

20. According to the civil law of the Arabian schools, retraction from gift without consideration is valid; but not so, if the donee has improved his gift, if he has alienated to another with possession, or if the donor and donee be spouses. Shah Makdum Buksh *versus* Luft Ali, 26th April 1834, . . . . . V. 355

21. If after execution of a deed of gift possession be given, according to the Mahomedan law the gift cannot be revoked. Musst. Bunnoo *versus* Musst. Hedayat and another, 9th January 1835, . . . . . VI. 16

22. A *kabeen-nameh*, or deed of marriage settlement, containing a gift by a husband to his wife of the whole property possessed by him and which hereafter might come into his possession, is valid according to

Mahomedan law, in regard to the property in actual possession of the husband, but not in regard to that which is non-existent. Oojudhea Beebe and others *versus* Mohun Beebe and another, 30th June 1835, .. VI. 30

23. A claim to the right of pre-emption to property, the possession of which had been transferred by a deed of *hibeh-bil-ewuz*, or gift for consideration, such consideration being expressly stipulated, is good in Mahomedan law. Syud Looft Ali *versus* Musst. Lazima, 29th July 1845, .. VI. 34

24. In a case of gift under Mahomedan law, specification of the property is not requisite, where the gift comprises the whole of the property of the donor, and is made in favor of only one donee. Musst. Sahebun *versus* Sheikh Khoda Buksh, 10th November 1835, .. VI. 44

25. According to the Mahomedan law, the resumption of a gift [except under certain circumstances stated in the body of the report] is legal. Sheikh Jeetoo and others *versus* Musst. Buddun Beebe and another, 7th November 1837, .. VI. 189

26. Under the Mahomedan law, seisin by the donee is essential to the validity of a gift. Nurmula Beebe Chowdrayn *versus* Assud-o-nissa Beebe, 20th April 1840, .. VI. 286

#### GRANDMOTHER.

See 'Inheritance,' No. 8.

#### GUARDIANS.

1. The Registrar of the Supreme Court, plaintiff in a suit, as guardian of a Mahomedan female (minor) was nonsuited as not legally authorized to act in her behalf. Bibi Ushruff-o-nissa *versus* the Registrar of the Supreme Court, 20th September 1848, .. VII.

#### GRANDSONS.

See 'Inheritance,' No. 56.

#### GRANTS.

1. A grant obtained by the acquirer in the substituted name of a female relation, [with the apparent intention of enabling her to take the estate at his death,] is of no avail in Mahomedan law against the right of the legal heirs of the real grantee. Sheikh Buhadur Ali *versus* Sheikh Domun and another, 8th August 1808, .. I. 238

2. A grant obtained in a fictitious or substituted name, is not illegal in Mahomedan law; and the property conveyed by the grant is vested in the real, and not the nominal grantee. *Ibid*, .. I. Note. 253

#### HEIRS.

See 'Inheritance,' *passim*.

#### HIBEH-BIL-EWUZ.

See 'Dower,' Nos. 1, 3.  
'Gifts,' Nos. 3, 19, 23.

#### HIBEH-BA-SHURT-OOL-EWUZ.

See 'Gifts,' Nos. 4, 19.

## HIBEI-MOSHAA, OR UNDEFINED GIFTS.

See 'Gifts,' Nos. 6, 7, 10, 13, 14, 15, 17, 18.

## HUSBAND.

See 'Inheritance,' Nos. 3, 33, 39, 41, 45, 62.

## IDIOT.

1. The engagement of an idiot is void in Mahomedan law. Kureem-o-nissa *versus* Ruheem Ali, 8th March 1817, .. .. II. 334

## INAAM.

See 'Alienation,' No. 4.

## INDEFINITENESS.

See 'Gifts,' No. 14.

## INHERITANCE.

1. Two-thirds of the property of the deceased, after payment of debts, necessarily falls to the heirs at law. Kishwur Khan *versus* Jewun Khan, 9th August 1799, .. .. I. 26

Ruzia Begum *versus* Aka Mahomed Ibrahim, 8th August 1806, .. I. 150

2. In a suit by one son of a deceased Mussulman against another, for a moiety of his estate, the Sudder Dewanny Adawlut consider the plaintiff, the son by a slave girl, and the defendant, son by a wife, to be heirs in equal degree. Gholam Husun Ali *versus* Zeinub Beebee, 20th July 1801, .. I. 48

3. But the deceased had settled on the defendant's mother a dower of three *lacs* of gold *mohurs*, which at her death [before her husband] was demandable by her heirs: the husband, one of the heirs, gets 10 *annas*; and the defendant, her son, 6 *annas*. These 6 *annas* of dower were therefore now demandable by the defendant from the estate; and as the amount was greater than the whole estate, and claims of dower must be satisfied before partition of heritage, the Sudder Dewanny Adawlut adjudged that the plaintiff's right of inheritance will not avail. Ibid, .. I. 18

4. A widow takes 1-8th, if there be children; a mother 1-6th if there be neither children nor sisters; the residue goes to the male heir as residuary. Musnud Ali *versus* Koorshed Banoo, 14th August 1810, .. I. Note. 54

5. Any male, in whose line of relation to the deceased no female enters, is residuary, and succeeds in preference to any distant kindred [*Zoo-il-erham*, or those in whose line of relation a female enters]. Thus the son of the father's brother took the estate to the exclusion of the daughter's daughter's son. Bhanoo Beebee *versus* Emaum Buksh, 5th August 1803, I. Note. 71

6. Sisters are excluded by the father. Ibid, .. I. Note. 71

7. Homicide, whether punishable by retaliation or expiable, is an impediment to the succession to the estate of the person slain; but presumptive proof does not bar the claim. Shah Abadee *versus* Shah Ali Nukee, 12th October 1803, .. .. I. 75

8. A grandmother is entitled to a specific share of 1-6th, and to the residue by return to her, from want of other admissible claimants as residuaries, in preference to distant kindred, [*Zoo-il-erham*,] who are those in whose line of relation to the deceased a female enters, Ibid, .. I. 75

9. A maternal aunt, being of the distant kindred, cannot inherit while there is a specific sharer. Ibid, .. .. I. 75

10. Male descendants in the 4th degree, are preferred in a case of inheritance to a descendant in the 3d degree in the female line, from a common ancestor. *Shah Ilahee Buksh versus Shah Kasim Ali*, 5th August 1805, .. I. 99
11. Lincal descent intends the male line. *Musst. Hya-o-nissa* and another *versus Mofukhir-ool Islam*, 17th September 1805, .. I. Note. 107
12. An alleged gift, from its not having been carried into effect during the lifetime of the donor, is not a bar to legal distribution according to the law of inheritance. *Casim Ali versus Fuzund Ali*, 27th November 1805, .. I. 113
13. A person obtaining a grant in the name of another, with the intention of holding the property during his life, and securing the succession of the nominal grantee at his death, cannot thereby defeat the right of inheritance of his lawful heirs, who are entitled on his demise to succeed to the property of which he died possessed, as part of his estate. *Sheikh Buhadur Ali versus Sheikh Dhomun and others*, 8th August 1808, .. I. Note. 253
14. A person dying leaves two sisters, one of whom has one son, the other two; the sons on the demise of their mothers will take *per stripes*, or inherit the shares of their respective mothers. But they will take *per capita*, if the deceased survived his sisters. *Ibid.*, .. I. 252
15. According to the *Soonee* code, the brother of the deceased is entitled to inherit as a collateral, after lincal heirs. By the *Sheea* code, a brother does not come in for any thing, if there be a daughter. *Wujeh-o-nissa Khanum versus Mirza Husun Ali*, 30th December 1808, .. I. 268
16. Apostacy from the Mahomedan faith, if subsequent to the devolution of hereditary property, does not deprive the apostate of the right of succession. *Wujeh-o-nissa Khanum versus Mirza Husun Ali*, 30th December 1808, .. I. 268
17. A *fuker* having appointed the defendant his successor, or *janusheen*, with the apparent intention of leaving him his property: 1-3rd of the estate was awarded to him, and the other 2-3rds necessarily fell to his widow as his heir. *Musst. Soobhancee versus Bheetun alias Shah Azam Ally*, 11th September 1811, .. I. 346
18. Appellant's claim on respondent, his cousin, for a moiety of the estate of her grandfather, adjudged as his right by inheritance, though a mortgage debt contracted under the management of the respondent's father was paid by the respondent. *Sheikh Bhckaree versus Emaum Buksh*, 5th November 1811, .. I. 355
19. Claim by respondent, as a daughter, to a share of her deceased father's zemindaree, adjudged on proof that she was the daughter of the deceased, and had been acknowledged by him as his child. *Fyaz Ali Khan versus Futima Khatoon*, 3d December 1811, .. I. 357
20. The Mahomedan law presumes a marriage between parties who live together as man and wife, and there appear nothing to invalidate that presumption. A son born under such circumstances, inherits equally with one born in proved wedlock; and is not divested of his right as one of the heirs of his deceased paternal uncle, though discarded by the latter. *Mehr Ali and another versus Kureem-o-nissa and another*, 28th April 1814, .. II. 112
21. The acknowledgment of a brother by the heir entitles to inheritance. *Ibid.*, .. II. 113
22. Of two widows on whom the husband had settled his property in equal proportions, one dying, the other has no right of inheritance agreeably to Mahomedan law; but the deceased widow's sister's son will take the property in default of nearer heirs. *Kali Khan versus Raja Mitterjeet Singh*, 19th May 1821, .. III. 90



23. In a suit in which both parties are *Sheeas*, the Court will decide according to the doctrines of the sect: according to the law prevailing among them, a brother is entirely excluded by a daughter. *Raja Deedar Hossein versus Rancee Zuhoor-o-nissa*, 12th August 1822, . . . . . III. 164

24. According to the Mahomedan law, there is no right of representation: in other words, a man shall not inherit with his paternal uncle, if his father died before his father's father. *Omui Khan versus Aboo Mahomed Khan and others*, 13th January 1823, . . . . . III. Note. 179

*Abdoo Ruhman versus Madaree Khan and others*, 17th August 1824, III. 404

25. A widow inheriting no property from her husband is not answerable for his debts. *Noor Jehan Begum versus Prem Sukh*, 6th June 1826, IV. 161

26. Renunciation of inheritance during the lifetime of the ancestor is null and void, the heir having then no vested right; and a claim may be preferred at any future time without limitation. *Musst. Khanum Jan versus Jan Beebee and others*, 13th February 1827, . . . . . IV. 210

27. A sister will take half of her brother's estate as a specific share and half by return. *Musst. Wajideh versus Kureem Buksh*, 14th July 1827, IV. 247

28. In the distribution of inheritance, both sects of *Mostims* recognize the same *furaiz*, or specific shares; but differ as to the distribution of the residue, if there be any. The *Sheeas* prefer the nearest kin, who divide it in proportion to their specific shares. The *Soonees* give preference to the *usbah*, or agnate kinsmen. *Raja Deedar Hossein versus Rancee Zuhoor-o-nissa*, 18th May 1830, . . . . . V. 29

29. The law officers declared that by the Mahomedan law, the death of a missing person may be judicially presumed when 90 years from his birth have elapsed, after which his estate may be divided among his heirs. *Musst. Mani Beebee versus Musst. Sahibzadee*, 15th April 1831, . . . . . V. 108

30. A decree reversed by the Snudder Dewanny Adawlut from its committing part of the estate of a person to his sister, with provision for eventual conversion of tenure by trust, into that of property; no hereditary right being found in a sister, she being excluded by a son and daughter. *Ibid.*, . . . . . V. 108

31. A general dedication of land for the purpose of a cemetery establishes *wuqf*, and exempts the same from descent to heirs; but the existence of tombs on land, does not bar partition among heirs except as to the actual spot covered by the tombs. *Meer Noor Ali versus Majideh and others*, 30th July 1831, . . . . . V. 136

#### SHARES.

The heirs of a deceased Mahomedan being	The estate will be divided into	Of which the distribution will be made as follows :
32. A son and 2 daughters, . . . . .	4 parts, . . . . .	{ 2 to the son, 1 to each daughter.
<i>Koolsom Khanum versus Mirza Mehdee</i> , 29th March 1798, . . . . .		I. 16
33. A husband and 2 sons, . . . . .	8 parts, . . . . .	{ 2 to the husband, 3 to each son.
<i>Ghulam Husan Ali versus Zeinub Beebee</i> , 20th July 1801, . . . . .		I. 51
34. A wife, a mother and 2 sons, . . . . .	48 parts, . . . . .	{ 6 to the wife, 8 to the mother, and 17 to each son.
<i>Ibid.</i> , . . . . .		I. 51
35. A mother and 2 sons, . . . . .	12 parts, . . . . .	{ 1-6th or 2 to the mother, 5 to each son.
<i>Ibid.</i> , . . . . .		I. 51

36. A widow, a mother, a son and a brother, .. .. . } 24 or 72 parts, { 1-8th or 3 or 9 to the widow, 1-6th or 4 or 12 to the mother, the residue or 17 or 51 to the son, the brother taking nothing.

But the son dying, 1-3d of his share, 1-3d of  $\frac{1}{4}$  =  $\frac{1}{12}$  goes to his mother, the widow, and the residue to his uncle, his father's brother. Hence the division is as follows: the widow  $\frac{9+17}{72} = \frac{26}{72}$ , the mother,  $\frac{1}{12}$ , the brother  $\frac{3}{4}$ . On the mother's death her son would take her share and have  $\frac{34+12}{72} = \frac{46}{72}$  Musnud Ali *versus* Khoorshed Banoo, 14th August 1801, .. .. . I. 54

37. A widow, a son, a daughter and 2 brothers, .. .. . } 24 parts, .. .. . { The widow 1-8th or 3. Of the residue the son takes 14, and the daughter 7. The brothers get no share.

Bhanoo Beebee *versus* Imaum Buksh, 5th August 1803, .. .. . I. 71

38. A mother, sister and father's brother, .. } 6 parts, .. .. . { Mother 1-3d or 2, sister  $\frac{1}{2}$  or 3, uncle, the residue or 1. Ibid, .. .. . I. 71

39. A husband, mother, son and daughter, } 36 parts, .. .. . { Husband 1-4th or 9, mother 1-6th or 6. Of the residue, 14 to the son, 7 to the daughter. Ibid, .. .. . I. 71

40. Three widows, a son and daughter, .. } 24 parts, .. .. . { The widows 1-8th or 3 between them. Of the residue 2-3ds or 14 to the son, and 1-3d or 7 to the daughter.

The 1st and 3d widows dying, the son takes 2-3ds, and the daughter 1-3d of the 2-24ths which fell to them. Beebee Jugun *versus* Baker Ali and others, 7th May 1804, .. .. . I. 81

41. A husband, a daughter, a brother, 3 sisters, .. .. . } Unpaid dower divided into 20 parts, .. .. . { Husband 1-4th or 5, daughter  $\frac{1}{2}$  or 10, brother 1-10th or 2. Each sister 1-20th or 1.

Ali Buksh Khan *versus* Kaeem Beebee, 24th August 1804, .. .. . I. 84

42. Wives, 2 sons and 6 daughters, .. .. } 80 parts, .. .. . { 1-8th or 10 to the wives, the residue to the sons and daughters in the proportion of a double share to males, or 14 to each son and 7 to each daughter.

Meer Nusrut Ali *versus* Meer Kasim Ali, 17th September 1805, .. .. . I. 108

43. Second wife, son by 1st wife, son by 2d wife, daughter by 2d wife, .. .. . } 40 or 960 parts, { Second wife 1-8th, or 5 or 120. Each son, 14 or 336, daughter 7 or 168.

The daughter dying, her share  $\frac{1}{16}$  is thus divided. The 2d wife, her mother, 1-6th or 28—her son 70—her 2 daughters 35 each. The 2d wife dying, her son takes her share  $120 + 28 = 148$ . Hence the division is: son by 1st wife  $\frac{3}{16}$ , son by 2d wife  $\frac{336+148}{960} = \frac{484}{960}$  Grandson by the

daughter  $\frac{7}{16}$  and 2 grand daughters by the daughter  $\frac{3}{16}$  each. Sufdar Hosein *versus* Enayet Hosein, 25th November 1805, .. .. . I. 111

44. A widow and 2 sons, .. .. . } 16 parts, .. .. . { Widow 1-8th or 2, the sons 14 each.

Casim Ali *versus* Furzund Ali, 27th November 1805, .. .. I. 114

45. A son and two daughters both married to the same person, .. } 16 parts, .. .. { The son 8, each daughter 4.

The son dying, his sisters divide his share equally, so that each has 8 parts. The 2d daughter dies, leaving her husband and 2 sons; the husband takes 2, and the sons each 3. The 1st daughter dies, leaving her husband and 2 nephews; the husband takes 4, and the nephews 2 each. One nephew dying, his father takes his share. Hence the division is: the

husband  $\frac{2 + 4 + 3 + 2}{16} = \frac{11}{16}$  and the nephew  $\frac{3 + 2}{16} = \frac{5}{16}$ . Musst.

Khyalee Khanum *versus* Musst. Koolsoom Khanum and another, 4th September 1807,.. .. I. 217

46. A widow, a sister and her one son, another sister and her two sons, .. .. } 16 parts, .. .. { 1-4th or 4 to the widow, and the remainder equally to the two sisters or 6 each.

On the demise of the sister, the share of the first would go to her only son, that of the second to her two sons in equal shares. Had the sisters died during the lifetime of the proprietor, his wife would have taken her 1-4th or 4, and the three nephews would have taken equal shares in the remainder or 4 each. Sheikh Buhadur Ali *versus* Sheikh Dhomun and others, 8th August 1808, .. .. I. 252

47. A widow, son, nephew [son of half brother] and widow's mother, .. .. } 24 parts, .. .. { 1-8th or 3 to the widow, the remainder 21 to the son.

But on the death of the son, his mother, the widow, takes 1-3d of his 21 parts or 7 parts, and his half cousin the remaining 14; and on the widow's death, her mother takes her share. Hence the nephew has  $\frac{1}{4}$  and the widow's mother  $\frac{3 + 7}{24} = \frac{10}{24}$ . Ahmed-oollah and another *versus* Be-

haroollah, 7th August 1806, .. .. I. 286

48. A brother and a sister, .. .. } 3 parts, .. .. { 2 to the brother and 1 to the sister.

Banoo Beebee and another *versus* Fukherooden Hossein, 3d May 1816, .. .. II. 284

49. A mother, 3 wives, 3 daughters and a brother, .. .. } 72 or 216 parts, { 1-6th, or 12 or 36 go to the mother, 1-8th or 9 or 27 is equally divided among the widows who take 3 or 9 each, 2-3d or 48 or 144 is equally divided among the daughters, who take 16 or 48 each—the brother takes the remainder or 3 or 9.

But one daughter dying, of her share  $\frac{4}{16}$  her mother the 1st wife takes 1-6th or 8-2-3ds or 32 is equally divided between her sisters, who each get 16—the residue 8 goes to the father's brother, her uncle. Hence the division is to be as follows: Mother  $\frac{36}{216}$  1st wife  $\frac{9 + 8}{216} = \frac{17}{216}$

2d and 3d wife each  $\frac{9}{216}$ . Two surviving daughters each  $\frac{48 + 16}{216} =$

$\frac{64}{216}$  and brother  $\frac{9 + 8}{216} = \frac{17}{216}$ . Raja Deedar Hussein *versus* Rane

Zuhooroonissa, 4th August 1820, .. .. III. 47

50. A widow and 3 daughters, .. .. } 24 parts, .. .. { Widow 1-8th or 3, each daughter 7.  
Shumshere Ali Khan *versus* Wulayut Begum, 11th December 1820, III. 58
51. A wife, 2 sons and 4 daughters, .. .. } 64 parts, .. .. { Wife 1-8th or 8, each son 14, each daughter 7.  
Ranee Buksh Beebee *versus* Nadir Beebee, 11th December 1820, .. III. 59
52. A wife, a mother, 3 sisters of the full blood, one sister of the half blood, and two brothers of the half blood, .. .. } 39 parts, .. .. { 9 to his wife, 6 to his mother, and 8 to each full sister; the sister and brothers of the half blood take nothing.  
Ibid, .. .. III. 59
53. A mother, two widows, and a son, .. } 48 parts, .. .. { 1-6th or 8 to the mother, 1-8th or 6 to the widows who have 3 each, and 34 to the son.  
One widow and the mother dying, the son takes their shares. Hence he has  $34 + 8 + 3 = 45$  out of 48. Mirza Kaim Ali Beg *versus* Musst. Hingun and others, 15th April 1822, .. .. III. 152
54. A wife, mother, and half sister, .. .. } 13 parts, .. .. { 3 to widow, 4 to mother, and 6 to half sister.  
Shureef-o-missa *versus* Khizur-o-missa and others, 5th Feby. 1823, .. III. 214
55. A mother, brother, and widow, .. .. } 12 parts, .. .. { 3 to widow, 5 to brother, and 4 to mother, on whose death the brother, her son, will take her share and have  $\frac{5 + 4}{12} = \frac{9}{12}$   
Fukeer Mahomed *versus* Musst. Kande, 15th January 1824, .. III. 294
56. A widow, 2 sons, one of whom dying left 3 sons, and 4 daughters, } 192 parts, .. .. { The widow takes 1-8th or 24, the son 42, the grandsons equal parts in their father's share of 42 or 14 each, the daughters 21 each.  
Mahomed Ali Khan and others *versus* Mahomed Ushruf Khan and another, 30th April 1827, .. .. IV. 231
57. A son and daughter, .. .. } 3 parts, .. .. { 2 to the son, 1 to the daughter.  
Musst. Wajideh *versus* Kurrcem Buksh, 14th July 1827, .. IV. 247
58. A widow, a son, and 2 daughters, .. } 32 parts, .. .. { Widow 1-8th or 4, son 14, each daughter 7.  
Chutter Singh *versus* Musst. Noorum, 29th November 1837, .. IV. 280
59. A widow, a concubine, and a daughter by the latter, it being proved that the deceased recognized the latter as daughter, .. .. } { 1-8th of his estate went to the widow and concubine, and the remainder to the daughter.

- Khyrat Ali and another *versus* Zuhoor-o-nissa, 15th March 1830, .. V. 17
60. A son, a daugh- } 3 parts, .. .. } Son 2, daughter 1, sister ex-  
ter, and sister, .. .. } cluded.
- Musst. Manee Beebee *versus* Musst. Sahibzadee, 15th April 1831, .. V. 108
61. A son and 6 } Son 2-8th, each daughter  
daughters, .. .. } 1-8th.
- Hedayut Ali Khan and another *versus* Tajan and others, 4th April  
1833, .. .. V. 288
62. The legal shares of father, mother, and spouse, are respectively  
1-3d, 1-6th and  $\frac{1}{2}$ . Imdad Ali *versus* Kadir Buksh and others, 24th April  
1833, .. .. V. 296
63. A Mahomedan dies leaving as heirs two widows, three sons, and  
four daughters. His property will be divided into 80 shares, of which the  
widows will take 10 between them, the sons 14, and the daughters 7 each.
- Synd Lutf Ali and another *versus* Musst. Wasaum, 25th April 1837, .. VI. 159
64. Rule of distribution under the Mahomedan law in the case of a  
widow, mother and two or more daughters. Musst. Rabca Khatoon and  
another *versus* Budroomissa and another, 28th December 1841, .. VII. 65
65. The widow is not entitled to participate in the return, .. VII. 65
66. Rules of distribution in the case of two wives, a mother and three  
daughters, .. .. VII. 65
67. Exemplification of the vested inheritance of the survivors in the  
case of a daughter, dying before distribution of estate, leaving a mother, a  
half sister and a uterine sister, .. .. VII. 65
68. Rule of distribution in the case of a mother, half sister and uterine  
sister, .. .. VII. 65
69. Rule of distribution in the case of two wives, a mother and three  
daughters, one of the daughters having died before distribution, leaving a  
mother, half sister, and uterine sister, .. .. VII. 66
70. A suit to obtain possession from defendant of property left by a  
supposed *Moosulmanee*, on the ground of plaintiff being *Moosulmanee* and  
the legal heir, whereas the defendant was said to be a Hindoo. Musst.  
Wuzeer Bukhsh *versus* Musst. Burf-o-nissa and others, 19th June 1844, VII. 176

## JANUSHEEN.

See 'Bequests,' No. 5.

## JOINT FAMILIES.

See 'Endowments,' No. 17.

## JOINT FUNDS OR PROPERTY.

See 'Gifts,' Nos. 6, 15, 17.

## KAZEE.

1. A claim by a *kazee* to fees for the solemnization of a marriage, dis-  
allowed under Section 8, Regulation XXXIX. 1793. Zeenutoollah *Kazee*  
*versus* Nujeeboollah and others, 6th July 1835, .. VI. 31

## KABEEN-NAMEH.

See 'Deeds,' No. 1.  
 'Dower,' Nos. 22, 32,

## KHILWUT-I-SUIHEEH.

See 'Dower,' No. 17.

## LEGACY.

See 'Alienation,' Nos. 3, 5.  
 'Bequests,' Nos. 3, 6.

## LEGITIMACY.

See 'Marriage,' No. 9.

## LIMITATION.

1. Claim to inheritance according to Mahomedan law may be preferred at any time subsequent to the death of the ancestor without limitation. Musst. Khanum Jan and another *versus* Musst. Jan Beebee and others, 13th February 1827, .. .. IV. 210  
 See 'Limitation,' Nos. 1, 8, 20, 25, 39, 47, 53, 54. Part I. General.

## LINEAL DESCENT.

See 'Inheritance,' No. 11.

## MAINTENANCE.

1. An heir being debarred from sharing in the estate of the deceased, in consequence of the whole of the assets having been absorbed by dower, the Court decreed that he was entitled to receive maintenance from the person who took the estate. Gholam Hussun Ali *versus* Zeinub Bebee, 20th July 1801, .. .. I. 51  
 2. Held that a [Mahomedan] woman having preferred a claim against her father-in-law, for certain real and personal property, and her claim being dismissed, it is not competent to the Court to award her a monthly allowance payable by the defendant, no such claim having been preferred by her. Meer Ubdool Kureem *versus* Fukhr-o-nissa Begum, 2d August 1820, .. .. III. 44  
 See 'Dower,' No. 19.

## MARRIAGE.

1. The fact of a marriage proving illegal by the return of the former husband, supposed to have been dead, does not invalidate a gift in lieu of dower made on the occasion of the marriage. Newaza Ferash *versus* Musst. Atlussee and another, 26th November 1800, .. .. I. 31  
 2. Supposing a Mahomedan to have married four slave girls, and then a free woman, the last marriage is good, and not a fifth marriage; for marriage of slave girls is of no effect in law. Gholam Hussun Ali *versus* Zeinub Bebee, 20th July 1801, .. .. I. 48  
 3. To constitute marriage, there should be the reciprocal expression of *Ejaub-o-kubool*, or declaration and consent. The man should say:—'for

such a dower, I have received such a woman in marriage;’ and she should say, ‘I have agreed to it;’ or the woman’s *wukeel* should say, ‘for such a dower I have given such an one to be the wife of such an one.’ The man’s *wukeel* should say: ‘on the part of such an one I have consented.’ It is required that there be two free-men, of sound mind, of full age, and of the Mahomedan faith, or one man and two women of the same qualifications, present at the ceremony, to hear the mutual declaration. The preparing of *sherbet* and betel leaf, and giving the same to the bridegroom and bride, and distributing a portion to the persons present, are forms not requisite in law to the ceremony of marriage. Gholam Hussun Ali *versus* Zeinub Bebee, 20th July 1801, . . . . . I. 48

4. The Mahomedan law presumes a marriage between parties living together as man and wife, and nothing appears to invalidate that presumption: and a son born under such circumstances, inherits equally as a son born in proved wedlock, and is not divested of his right as one of the heirs of the estate of his paternal uncle, though discarded by the latter. Mehr Ali and another *versus* Kureem-o-nissa Begum and another, 28th April 1814, . . . . . II. 112

5. In the marriage of minors, the attendance of the guardians is an indispensable condition. If then a boy and girl, both minors, in the presence of witnesses enter into a marriage contract as their own act, and the husband shall acknowledge himself indebted so many thousand rupees to the wife, and the guardians of the said minors, being also present, give their consent, either at first, or afterwards; or if the minors, on coming of age, confirm the agreement: in either case the marriage is valid, and the husband must pay the dower whether a written document have been executed or not. If the guardians were not present at the marriage, and after hearing of it they did not give their consent; and if the minors on coming of age do not acknowledge the marriage as valid, it is void. Kureem-o-nissa *versus* Ruheem Ali, 8th March 1817, . . II. 233

6. When the marriage is void, divorce cannot take place, for divorce springs out of marriage. *Ibid.*, . . . . . II. 233

7. The divorce of a minor is not valid in law. *Ibid.*, . . . . . II. 233

8. One witness stated that he conjectured that the mother of the plaintiff was married to A, but admits that he was not present at the marriage; and that he never heard A acknowledge the marriage. The defendant, denying the marriage, acknowledged that the plaintiff’s mother was the *haram*, or concubine of A. Such expression, in conjunction with the conjectural evidence of one witness, cannot raise a presumption in favor of the marriage. Hukeem Wahed Ali *versus* Khan Beebee, 6th August 1821, . . . . . III. 102

9. Continual cohabitation and acknowledgment of parentage form sufficient presumptive evidence of wedlock and legitimacy. Mirza Kaim Ali Beg *versus* Musst. Hingun and others, 15th April 1822, . . . III. 152

10. A man cannot marry his wife’s sister, while his wife is living; but the second marriage will not invalidate the first. Shureef-o-nissa *versus* Khayr-o-nissa Khanum and others, 5th February 1823, . . . III. 210

11. A man cannot legally have more than four wives living at the same time; and the fact of a woman’s having allowed 42 years to elapse since the death of her alleged husband, without advancing any claim, though many suits were brought in this interval, was held to furnish strong presumption that she was not legally married to him. Shums-o-nissa *versus* Meer Gouhur Ali and others, 27th November 1827, . . . IV. 283

12. According to Mahomedan law, the betrothal made by a father of his daughter during her minority cannot be set aside by her on coming of age; but she is warranted nevertheless in refusing to leave her parent’s

protection, until the payment of *mehr moujjul*, or exigible dower. Musst. Fukhr-o-nissa and another *versus* Shah Ally Ruzah, 24th June 1840, VI. 293

13. The second marriage of a Mahomedan woman during her first husband's life time is invalid, and forms no bar to the recovery of her person by her first husband on civil action, notwithstanding her unwillingness to return to him. Musst. Ameena and others *versus* Kutto Khan, 20th April 1841, .. .. . VII. 27

14. Held that a *kabeen-nameh*, or deed of marriage settlement, is invalid, if the property conveyed by it be not specified. Kadir Dad Khan *versus* Noor-o-nissa, 17th April 1844, .. .. . VII. 158

#### MATERNAL AUNT.

See 'Inheritance,' No. 9.

#### MINOR AND MINORITY.

See 'Dower,' No. 27.

'Gift,' Nos. 8, 12.

'Marriage,' Nos. 5, 7.

#### MISSING PERSON.

See 'Inheritance,' Nos. 29, 30.

#### MOOTUWULLEE.

See 'Endowments,' Nos. 15, 16, 17.

#### MORTGAGE AND CONDITIONAL SALE.

See 'Mortgage and Conditional Sale,' Nos. 1, 4, 40, 54, Part I. General.

#### MOTHER.

See 'Inheritance,' Nos. 4, 34, 35, 37, 38, 39, 47, 49, 52, 53, 54, 55, 62.

#### MOUJJUL.

See 'Dower,' Nos. 9, 17, 18.

#### MOWUJJUL.

See 'Dower,' Nos. 9, 18.

#### MUDDUD MASH.

See 'Bequest,' No. 4.

#### NEPIHEW.

See 'Inheritance,' Nos. 45, 46, 47.

#### PARENTAGE.

1. There being proof that the respondent was the daughter of the deceased by his concubine, a slave girl, and that he had acknowledged himself to be her father, this was sufficient to entitle her to inherit. The acknow-



ledgment of parentage alone would not avail in the case of a free woman not married to the acknowledger. *Fyaz Ali Khan versus Musst. Fatima Kha-toon*, 3d December 1811,.. .. I. 357

2. The declaration of a person of unsound mind is insufficient to establish parentage, or even of one of sound mind, when the parentage is claimed by another. *Rujub Ali Khan versus Ram Chand Chatterjee*, 10th April 1820, .. .. ~~IX.~~ 23

3. Filial relationship, including the right of inheritance, to a Moslim, in the child of his domestic concubine [such child affirming, if capable of speech,] is established by his unretracted recognition; provided paternity be not commonly imputed to another man. *Khyrat Ali and another versus Zuhoor-o-nissa*, 15th March 1830,.. .. V. 17

See 'Marriage,' No. 9.

### PEEROOTER.

See 'Endowments,' No. 17.

### PRACTICE.

See 'Practice,' No. 15, Part I. General.

### PRE-EMPTION.

1. The Mahomedan law allows the right of pre-emption to a partner in the property of the land sold,—to one participating in the immunities or privileges of it,—and to a neighbour. *Ram Ruttun Singh and others versus Chunder Nurain Rai*, 29th September 1792, .. .. I. Note. 1

2. On a claim of *shoofa*, or right of pre-emption, founded on vicinage and partnership, it being proved that the plaintiff had made the requisite demand and protest, on hearing of the sale, though payment was not immediately tendered, judgment was given in favor of the plaintiff in conformity with the opinion of the Mahomedan law officers, on condition of payment by a certain day. *Gholam Nubbee Chowdry versus Gour Kishore Rai*, 22d October 1811,.. .. I. 350

3. If A, a *Mussulman*, transfer lands to B by sale, and C afterwards come forward and establish his right of *shoofa*, or pre-emption, he will be entitled to the lands at the price paid for them by B, who will be compelled to refund the profits accrued during the period of his possession to C, receiving himself the purchase money back from A. *Uodan Singh and another versus Munera Khan and others*, 15th September 1813,.. .. II. 85

4. By the settlement concluded between Government and a *mocurrureedar*, he becomes *malik* of the proceeds of his *mocurruree*, with the exception of a portion thereof, which the late *malik* receives as *malikana*; consequently the right of the late *malik* in such lands is not wholly transferred to the *mocurrureedar*, but he and the late *malik* are to each other in the relation of partners, and the right of *shoofa* appertains to one partner over the share of the other partner, because such property is undivided, and he is a sharer in the thing itself. *Ibid*,.. .. II. 88

5. The respondent having been declared entitled to redeem from mortgage one moiety of a village, as the portion to which he was entitled by the law of inheritance, as an heir of the original mortgager, was informed that he was entitled to recover by right of *shoofa*, or pre-emption, the other moiety which had been sold by his co-heir. *Mukhun Lal versus Wuzzeer Ali*, 14th March 1825,.. .. IV. 32

6. Under the civil law of the Moslims, the right of *shoofa*, or pre-emption, on common tenancy is preferred to that resting on vicinage. Not adjudged. *Sukena Khatoon versus Gowrie Sunker Sein and others*, 9th July 1833, .. V. 300
7. Also right of *shoofa* [literally intercession] not barred by refusal before a sale is completed, for it arises from and does not precede such sale, per opinion of *mooftee* of lower court, but point not adjudged]. *Ibid*, .. V. 300
8. A claim in right of pre-emption to property, the possession of which had been transferred by a deed of *hibeh-bil-euuz*, or gift for consideration, such consideration being expressly stipulated, is good in Mahomedan law. *Synd Looft Ali versus Musst. Lazma*, 29th July 1835, .. VI. 34
9. Under the Mahomedan law, pre-emption cannot be claimed in a case of *bye-tuljeen*, or fictitious sale made to serve a temporary purpose. *Mahomed Ali Khan versus Ushruf-o-nissa Begum*, 10th December 1840, .. VI. 306
10. In a case of *bye-tuljeen*, a lease of the property from the alleged purchaser to the seller, does not render the sale absolute, so that pre-emption can be claimed. *Ibid*, .. VI. 306
11. Pre-emption if not claimed immediately, is barred. *Ibid*, .. VI. 306
12. Pre-emption cannot be claimed where the consideration is not expressed. *Ibid*, .. VI. 306

## PRESUMPTION.

1. It is presumed that a father making a gift of property to his minor son and still retaining possession thereof, is acting as trustee for his son. *Newazee Ferash versus Musst. Atlussee and another*, 26th November 1800, .. I. 31
2. The widow of a Mahomedan declared his estate to have been given by him during his lifetime to a grandson. This is good ground for presuming that she must have remitted her claim of dower. *Beebee Muwan versus Meer Nusrut Ali*, 6th June 1803, .. I. 64
3. Presumption of homicide will not invalidate a claim to inheritance. *Shah Abadee versus Shah Ali Nukee*, 12th October 1803, .. I. 75
- See 'Dower,' Nos. 14, 17, 28.  
'Marriage,' Nos. 4, 9, 11.

## RELIGIOUS ENDOWMENTS.

See 'Endowments,' *passim*.

## RELINQUISHMENT OF CLAIM.

1. Renunciation in the time of the ancestor is null and void under Mahomedan law, and a claim to it may be preferred at any subsequent period without limitation. *Musst. Khamum Jan versus Musst. Jan Beebee and others*, 13th February 1827, .. IV. 210
- See 'Dower,' No. 20.

## RENUNCIATION.

See 'Inheritance,' No. 26.

## RETRACTION.

See 'Gifts,' No. 2.

## REPRESENTATION, RIGHT OF.

See 'Inheritance,' No. 24.

## RULING POWER.

See 'Bequests,' Nos. 1, 7.

## SALES [PRIVATE.]

1. A sale by a *Mussulman* of his children's lands, he having declined the guardianship of them, held to be null and void; and he was directed to refund the purchase money with interest, with liberty however to sue his children for the recovery of the money, if it was expended for their benefit. *Moulvee Syud Ushruf Ali versus Mirza Qasim and others*, 24th August 1820, .. .. . III. 49

2. A sale of the share of a missing person by his sister and sister's son set aside, as they had no power to sell it. *Chutter Singh versus Musst. Noorun*, 29th November 1827, .. .. . IV. 280

3. A father by two separate deeds had sold all his property to his son, and made over to him the purchase money as a free gift. The provisions of the contract never having been carried into effect, and the sale being invalid under the Mahomedan law, as being of the kind denominated *bye-i-tuljeeh*, it was held by the Sudder Dewanny Adawlut to be null and void. *Musst. Hingoo versus Meer Furzund Ali and another*, 5th April 1828, .. .. . IV. 307

4. A *tuljeeah* sale is thus explained by the author of the *Noor-ul-unwar*, an Arabic treatise on the principles of Mahomedan law. In explaining the circumstances which bar the competency of a person to contract, he mentions, among others, *hazl*, or jesting; and under the head remarks, '*Tuljeeah* means foreing, and may be defined to be the straining of a contract, so as to produce a different result from that which it outwardly bears; so that the parties appear to the world to execute a sale for some purpose which calls for it, while in fact no sale takes place between them. *Hazl* is a more comprehensive term, but the rule regarding both is the same, viz. that competency is conditional, and not necessarily destroyed. *Hazl* consists in this, that the contractors secretly agree that they should apparently execute a sale before men, whilst in reality no contract is formed. Should they, after such contract apparently made, differ regarding the previous agreement, one party holding that the contract is fictitious, and the other it is *bond fide*, the correct opinion is that the presumption is in favor of the former, and the sale is to be annulled.' Vide *Noor-ul-unwar*, page 351, Cal. Ed. of 1818. *Ibid.*, .. .. . IV. Note. 309

5. A woman in exchange for a *chumpakullee*, or necklace, gave half of her property to another person, on condition that the latter should not alienate it, but leave it on her death to two individuals named in the deed of conveyance. Held that the transaction being a gift for a consideration, *hibeh-bil-eruz*, was in Mahomedan law in reality a sale; that the conditions of the deed were not binding; and that on the death of the vendee, the property would descend to her heirs, to the exclusion of the persons in whose favor those conditions were made. *Mirza Beebee versus Tola Beebee*, 5th February 1829, .. .. . IV. 334

6. Under the Mahomedan law, a sale of the nature called *bye-i-tuljeeah*, to which effect has not been given, and which was clearly intended to serve a temporary purpose, is invalid in regard to the transfer of property under such sale. *Hedaet Ali Khan and another versus Hissam Ali Khan and others*, 25th April 1839, .. .. . VI. 257

## SUPERINTENDENT.

### SHARES.

See 'Inheritance,' *passim*.

### SHEEAS.

See 'Dower,' Nos. 15, 16.

'Gifts,' No. 17.

'Inheritance,' Nos. 15, 23, 28.

### SHOOFA.

See 'Pre-emption,' *passim*.

### SISTER [FULL BLOOD.]

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# APPENDIX.

## INDEX

TO THE

**First Volume of the Selected Summary Reports**

OF THE

**SUDDER DEWANNY ADAWLUT,**

FROM 1834 TO 1848 INCLUSIVE.

☛ The Roman Numerals refer to the Parts, and the Arabic to the Pages.

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  3. The claimant of an estate in right of inheritance is not required to include all debtors to it in one suit: nor should he be referred to a regular suit to prove his title, if it be contested by a party claiming on a specialty. Rumnec Dasse and others, 20th January 1848, .. II. 127
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## APPEALS TO THE PRIVY COUNCIL.

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  3. Section 3, Regulation VII. 1813, is inapplicable to awards of arbitrators regarding personal property. *Omrao Naik*, 3rd February 1848, .. II. 130
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## ARREST.

1. A mere arrest, without commitment to jail, is no bar under Section 3, Regulation VI. 1830, to the subsequent arrest and imprisonment of a judgment debtor. *Musst. Bimla Dibbea Chowdhraim*, 21st March 1842, .. II. 25

2. The imprisonment of a debtor by the civil court, against the will of his creditor, and his subsequent release in default of deposit of diet money, is no bar under Section 3, Regulation VI. 1830, to the issue of process of arrest against the debtor on the motion of the creditor. The Salt Agent of Chittagong, 16th January 1843, .. .. II. 45
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## ASSETS OF SALE.

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## ATTACHMENT.

1. Proof of intention to alienate, and of a refusal, or neglect, to give security is requisite before a zillah court can attach the property of a defendant under Section 5, Regulation II. of 1806. See Construction 190. Hur Chunder Chowdhree, 31st August 1841, .. .. II. 16
2. Held that Section 21, Act XII. 1841, does not authorize a collector in refusing to attach the surplus proceeds of a sale for arrears of revenue in deposit in his office, in obedience to the orders of the civil court passed under Section 5, Regulation II. 1806. Rajah Kishenchunder, 18th April 1842, .. .. II. 28
3. A forfeited deposit, ordered by the Government to be refunded to the party mulcted, was attached by order of the civil court in execution of a decree, but subsequently applied by the collector to the discharge of the Government revenue due on estates, the property of the party to whom the refund was to be made. Held by the Sudder Dewanny Adawlut that the collector had no power thus to set aside the attachment of the court. Chytun Churn Sein and others, 11th July 1843, .. .. II. 51
4. The sale of a *putnee talook*, under attachment by order of the civil court, cannot, for that reason, be deferred in the event of its becoming hable to sale under Regulation VIII. of 1819, for arrears due to the zemindar. Ramkomar Bunorjeeah *versus* Salt Agent of Bulloah, 20th September 1844, .. .. II. 61
5. Promissory notes may be attached under Section 5, Regulation II. 1806, when found in the name of the defendant in the action, or endorsed to him or her. Judoonath Sundyal, 28th February 1846, .. .. II. 76
6. Held that the private purchase of property, after its advertisement for sale in satisfaction of a decree, but without issue of proclamation of attachment under Regulation II. 1806, cannot be summarily set aside. Mehr Chund Misr, 3rd September 1846, .. .. II. 84
7. The attachment by order of the civil courts of a *putnee talook*, does not affect the right of the zemindar to levy his rent by sale. Muthoor Mohun Mitter *versus* Bindrabun Chunder Udhekari, 26th October 1846, .. .. II. 86
8. In a case in which a principal sudder ameen ordered the attachment of a share in certain shops and mercantile establishments under Section 5, Regulation II. 1806, he was instructed to limit himself to the issue of notice forbidding the alienation of the share. Musst. Parbutteah Dossea, 25th May 1847, .. .. II. 102

9. A obtained a decree against four defendants. B obtained a decree against three of them. The property of all four was sold in execution of both decrees. The fourth sued to set aside the sale, on the ground that he was not a party to the suit of B, and other grounds, and obtained a judgment in his favour. Held that this judgment did not in any way affect an attachment under Section 5, Regulation II. 1806, taken out by A, while his suit was pending against the property of the fourth. *Sunder Sahee*, 6th July 1847, .. .. . II. 108

10. Attachment of property to secure the execution of eventual judgment, on other grounds than those set forth in Clause 1, Section 5, Regulation II. 1806, is illegal. *Bipeen Beharee Ghose*, 27th September 1847, .. .. . II. 120

11. An estate only privately divided is not exempt from attachment under Section 26, Regulation V. 1812. *Mulunder Nuran Race*, 10th January 1848, .. .. . II.

12. It is unnecessary to inquire into claims to property before issuing proclamation in bar of its alienation under Regulation II. 1806. *Maharajah Hetnarain Singh*, 21st August 1848, .. .. . II.

See 'Execution of Decree,' Nos. 7, 19.

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#### BUTWARREN.

See 'Attachment,' No. 10.

'Collection,' No. 1.

#### BRAHMIN'S FEES.

See 'Execution of Decree,' No. 7.

#### CANTONMENT.

See 'Execution of Decrees,' No. 41.

#### CAZEE.

1. Held by the court, on a summary application, that it is not competent to a zemindar to collect fees appertaining to the office of *cazee* the question of right however was still left open to a regular suit, should the zemindar think proper to try it. *Bupla Dibbeca Chowdram* and another, 15th January 1841, .. .. . II. 1

#### CESSES.

See 'Fines,' No. 2.

#### CAUSE OF ACTION.

1. The institution of an enquiry into a plea of fictitious purchase made after judgment passed by a party to the suit, constitutes a new cause of action under Section 4, Regulation V. of 1798, and cannot be looked upon as carrying out the original intentions of the court passing the decree. *Bakshin Bay versus Taj Singh*, 13th June 1840, .. .. . I. 32

## CHAMPERTY.

1. A contract to give up a portion of the property claimed to a person, on condition of his advancing the funds required for the costs of suit, is illegal; and a joint suit instituted for the recovery of the property by the parties to such contract is liable to be nonsuited. *Messrs. Lamb and Wise versus Issur Chunder Ray*, 25th April 1842, .. .. II. 29

## COLLECTOR.

1. The *butwarreh* of an estate partly the property of Government and partly of private individuals, must nevertheless be made by the revenue authorities. *Collector of Mymensingh*, 11th March 1844, .. .. II. 57
  2. A collector is not personally amenable to the civil courts for acts done by him under Regulation VIII. 1831. *Collector of Purneah*, 15th June 1847, .. .. II. 104
- See 'Joint Undivided Estates,' No. 1.  
 'Practice,' No. 2.  
 'Attachment,' Nos. 2, 3.

## COLLECTION OF DEBTS.

1. The certificate under Act XX. of 1841, is granted specially for facilitating the collection of debts on succession, and does not refer to applications for succession to property. *Syed Mahomed Reza and another*, 5th July 1847, .. .. II. 107
2. The personal attendance in court of the petitioner to execute the engagement on receipt of a certificate under Act XX. 1841, is unnecessary. *Birn Mye Gooptea*, 17th January 1848, .. .. II.

## COMPROMISE.

1. A compromise is inadmissible between parties in a case of execution of decree, if the decree holder in it be a judgment debtor in another case, to satisfy the claim against him in which his decree is judicially assigned. *Chowdhree Dowlut Singh*, 4th September 1848, .. .. II.
- See 'Execution of Decree,' Nos. 3, 22, 34, 35.

## CONDITIONAL SALE.

1. A sale, with a separate condition for the relinquishment of the property by the purchaser, on the seller producing another purchaser at a higher price within a specified time, held to be of the nature of a conditional sale, and subject to the rules of Section 8, Regulation XVII. 1806. *Rai Ram Bullabhi*, 26th December 1843, .. .. II. 54
- See 'Sale,' No. 5.

## CONTEMPT OF COURT.

See 'Dispossession,' No. 1.

## COSTS OF SUIT.

1. The *Sudder Dewanny Adawlut* cannot levy costs in an appeal to the Privy Council, which the decree of the Privy Council does not provide for. *Raja Motee Lal Opadyah versus Juggernath Gurg*, 11th September 1840, I. 48

2. Costs of suit are chargeable with interest. Juggut Chunder Mu-  
moodar, 27th December 1842, .. .. . II. 13  
See 'Execution of Decrees,' No. 41.

### COURT OF REQUESTS.

- See 'Insolvent,' No. 1.

### CURATORS.

1. Held with reference to the provisions of Section 3, Act XIX. of 1841,  
(regarding the appointment of curators for the protection of property  
against wrongful possession in cases of successions,) that the complainant  
must appear in person to make the solemn declaration thereby required.  
See Construction 1319. Syed Inait Hussem, 13th April 1842, .. II. 26
2. The representative (whether male or female) of a party under Section  
2, Act XIX. of 1841, must personally make the solemn declaration required  
by the 3d section of that law. Chunder Seekur Bose and others, 11th  
September 1847, .. .. . II. 118
3. The general rules for delivering possession under orders of court, apply  
to cases under Act XIX. 1841. Fatima Khan, 27th May 1848, .. II.
4. Conflicting claims to the property of a deceased person, under Act  
XIX. of 1841, must be decided by the courts, and possession given to the  
party having the best title. Koonjbeharce Singh, 5th June 1848, .. II.
5. The representative (whether male or female) of a party under Section  
2, Act XIX. of 1841, must personally make in open court the solemn decla-  
ration required by the 3d Section of that law. Musst. Bama Soondree  
Dossee, 11th September 1848, .. .. . II.  
See 'Appeal' No. 10.

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- See 'Practice,' Nos. 7, 22.

### DAROGAH.

- See 'Practice,' No. 33.

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1. Copy of a decision recorded in English, according to Act XII. 1843,  
must be given on application. Superintendent Marine Department, 8th  
June 1846, .. .. . II. 80

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- See 'Execution of Decree,' No. 21.

### DECREE.

- See 'Execution of Decree,' No. 43.  
'Farm,' No. 1.  
'Practice,' Nos. 13, 19.

### DEFAULT.

1. In the event of two or more defendants filing their answers to an  
action separately, the plaintiff, unless he obtain permission to the contrary,

- must reply to each within six weeks from the date of its presentation, otherwise he will incur the penalty of default. *Bunwaree Lal*, 23d September 1845, .. .. II. 71
2. If Government be a co-defendant in a suit, the plaintiff need not, after filing the plaint, take any steps in prosecution of the case till the answer of Government be given in. *Musst. Emam Bandee*, 24th November 1845, .. .. II. 72
3. It is unnecessary to reply to a defendant who confesses judgment. *Shama Soonduree*, 15th June 1846, .. .. II. 80
4. A mere omission to do a particular act, while the plaintiff is otherwise engaged in carrying on his suit, does not incur the penalty of dismissal under Act XXIX. of 1841. *Musst. Zoobeida Khanum versus Lootf-o-nissa Begum and others*, 11th May 1847, .. .. II. 99
5. A suit cannot be dismissed both on its merits and on account of default under Act XXIX. of 1841. *Kishen Mohun Mitr and others*, 31st July 1847, .. .. II. 114
6. The grounds which Act. XVI. of 1845, admits in justification of default, cannot be pleaded in appeal from an order of dismissal on default under Act. XXIX. of 1841. *Mahomed Kazim and others*, 19th June 1848, II.
- See 'Appeal,' Nos. 2, 3, 6, 8, 9.  
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 'Practice,' Nos. 10, 34.

## DEPOSIT.

1. The deposit which is forfeited under Sec. 5, Act. IV. of 1846, on neglect to pay the purchase money, is not divisible amongst those who hold decrees against the judgment debtor; but is to be applied in liquidation of the particular claim for the satisfaction of which the sale has been advertized. *Fletcher Alexander and Company*, 1st August 1848, .. .. II.
- See 'Execution of Decree,' No. 2.

## DISTRIBUTION OF ASSETS.

- See 'Execution of Decree,' No. 22.

## DISPOSSESSION.

1. The purchaser of property sold in execution of a decree having been forcibly ejected by the party complained against, within a month of obtaining possession under the orders of the civil court, the *Sudder Dewanny Adawlut* held that the court could summarily interfere to uphold the possession of the purchaser. *Ran Koomar Chowdhree*, 19th August 1835, .. I. 9
2. A civil court cannot stay execution of an award under Act IV. 1840, pending the decision of a suit instituted to reverse it. *Musst. Seanut-o-mssa and others*, 26th April 1847, .. .. II. 97
3. A single suit may be brought to reverse several awards under Act IV. 1840, involving the same grounds of action. *Ran Ruttun Raee*, 2d August 1847, .. .. II. 114

## EMBANKMENT.

1. The removal of an embankment having been ordered by a decree of court, held that the decree was sufficient authority to prevent the erection on another spot of another embankment, having the same effect. *Roop Chunder Kupalee and another versus Mahomed Usghuree*, 2d February 1841, II. 2

## EXECUTION OF DECREE.

### EMBEZZLEMENT.

1. Held by the Sudder Dewanny Adawlut, that a conviction of surreptitiously obtaining, and 'corruptly appropriating' money deposited in court against a ministerial officer, is sufficient to authorize the enforcement of the summary process for recovery, prescribed by Clause 3, Section 7, Regulation XVIII. 1817, and Section 6, Regulation III. 1827. Government Pleader, 9th August 1842, .. .. . II. 36

### ENDOWMENTS.

See 'Execution of Decree,' No. 20.

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1. When not otherwise specified, the era current in any particular district is to be presumed. Gurdharce Purshad, 11th January 1818, .. .. II.

### ERROR IN DECREE.

1. Mode of proceeding to amend an evident error in the decree of a former judge of the Sudder Dewanny Adawlut, without the admission of a formal review. Jadub Ram Surma *versus* Ranchurn Ker, 15th July 1811, II. 14

### ESCHEAT.

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### EVIDENCE.

1. There is no legal bar to the managing agent of one of the parties to a civil suit being summoned and examined as a witness on the motion of the opposite party. Soonamonce Dasse, 22d September 1836, .. .. I. 12
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## EXECUTION OF DECREE.

1. The offer of a decree holder to take property sold in the execution of his decree for more money than that concluded with the first purchaser, rejected by the Sudder Dewanny Adawlut, the sale being otherwise unexceptionable. Waheed-o-Nissa, 10th December 1838, .. .. I. 16
2. The orders of the zillah judge who refused to admit, without deposit, the bid of a decree-holder for property under sale in execution of his own decree, reversed by the Sudder Dewanny Adawlut. Tahir Mahomed, 6th March 1839, .. .. I. 18
3. A compromise between a decree holder and his debtor, of which timely intimation was not given to the court executing the decree, held to be no sufficient ground for reversal of the sale of the debtor's property, made in execution of such decree. Chundernath Surma Lushkar, 22d March 1841, II. 4
4. Rule regarding the order in which a decree is to be executed against the heirs of the *nazir* of a civil court, who had given in a false report of a surety's property. Madabee Dasse, 14th April 1841, .. .. II. 5
5. Held that the mere institution of an action for real property, is no bar to the sale of the rights and interests of the defendant in such property, in execution of a money decree given against him. Hurischunder Bonnerjee, 14th April 1841, .. .. II. 6



6. The petitioner purchased a lot sold in execution of a decree of court, and obtained a deed of sale from the zillah judge. The successor of the judge reversed the sale on the application of the late proprietor, presented some months after the sale had taken place. The court held that he was not warranted in so doing, and reversed his order. Kishen Kant Naik, 20th April 1841, .. .. . II. 1
7. The profits of the turn of service of a *brahmin* officiating at an idol temple, cannot be attached in satisfaction of a decree for a private debt. Mudoosoodun Hildar and others, 19th May 1841, .. .. . II. 10
8. Execution of a decree against a Hindoo widow, personal to herself, cannot be summarily had (after her death) against the estate of her husband, in possession of the son adopted by her with her husband's permission. The decree holder may try the question of the liability of the property by a regular suit. Beglar, 26th May 1841, .. .. . II. 10
9. A is confined in execution of a decree at the instance of B, who is, under a decree of court, a debtor of C. Held that on B's neglecting to deposit the subsistence money for A, C may deposit it and detain A in custody to enforce payment. Gopal Kishen Doss, 15th June 1841, .. II. 11
10. The order of a zillah judge declaring that a sale, in execution of a decree which adjudged re-payment of a loan previously advanced to protect the same property from public sale for arrears of revenue, had the same effect as such public sale and cancelled all leases granted by the late proprietor, overruled. Rai Mukoond Kishwur, 30th June 1841, .. .. . II. 13
11. A sale of property made in execution of a decree of court reversed, in consequence of the notice of sale having been suspended at the police *thannah* of a division other than that in which the property was situated. Sheeb Purshad Dutt, 7th September 1841, .. .. . II. 16
12. It is irregular for a collector to sell, in execution of a decree of court, property situated within the fiscal jurisdiction of another collector. *Ibid.*, .. .. . II. 16
13. It is not the province of the civil court, in applying to the revenue authorities to effect a sale in execution of a decree of court, to specify the exact portion of the defendant's property to be sold: the amount of the debt should be stated, and the quantity to be sold left to the discretion of the collector. *Ibid.*, .. .. . II. 17
14. The petitioners (Hindoos) having obtained a decree declaratory of their right to claim the performance of certain ceremonies by the members of their family, and damages for omission to perform them; the Sudder Dewanny Adawlut held that it could be enforced only in regard to the damages and costs of suit, and that each subsequent refusal to perform the rites constituted a separate ground of action. Hulas Ram Deb and another, 5th January 1842, .. .. . II. 21
15. The institution of a suit between co-debtors, arising out of a judgment given against them jointly in favor of a creditor, is no bar to the execution of the decree obtained by the latter. Ram Doss Bose, 18th January 1842, .. .. . II. 23
16. A claim to property advertized for sale in execution of a decree, must be investigated by the proper judicial authority of the district in which the property is situated. Beehee Saburi, 1st February 1842, .. .. . II. 24
17. The institution of a regular action by a claimant, after summary rejection of his claim to property advertized for sale in execution of a decree, does not necessarily bar the immediate sale of the rights and interests of the judgment debtor. Mufeezooddeen Chowdree, 14th March 1842, .. II. 24
18. A decree cannot be enforced against a person not a party to it. Dilawur Allee Khan, 15th March 1842, .. .. . II. 25
19. The civil court cannot stay the sale of a judgment debtor's property, and cause payment of the debt by the attachment of the same, without consent of the creditor. Rajah Dawur-oo-Zaman, 27th September 1842, .. II. 39

20. Land belonging to a Mahomedan which is occupied by tombs, cannot be sold in execution of a decree. Baboo Rass Behari, 21st November 1842, .. .. II. 40
21. Mode of proceeding in regard to the decree of a foreign court, when the decree holder desires to take out execution against property within the jurisdiction of one of the Company's courts. Gour Munnee Dassen, 6th December 1842, .. .. II. 41
22. An order of court to stay the sale of property founded on a statement that the debt, for satisfaction of which the sale had been ordered, had been settled, is insufficient cause for the reversal of the sale, if it shall appear that information of the compromise was not given to the court in time enough to stay the sale. Nadir Beebee, 27th December 1842, .. II. 42
23. A decree holder who has not previously taken out execution of his decree, cannot share with other decree holders (who have taken out process of attachment) in the proceeds of the sale of the debtor's property. Goluck-nath Bose, 27th December 1842, .. .. II. 43
24. An order passed in the execution of a decree for the sale of a contingent interest, was reversed by the Sudder Dewanny Adawlut, who directed the rights and interests in existence to be sold. Syud Ubdoolah, 8th July 1844, .. .. II. 59
25. The civil courts cannot be expected to execute awards which they consider illegal. Superintendent of Salt Chowkees of Bulloah, 12th May 1845, .. .. II. 69
26. Diet allowance for a debtor, confined on account of several decrees obtained against him by one creditor, need not be deposited in each case. Sudder Board of Revenue, 12th August 1845, .. .. II. 70
27. The principle of Section 110, Regulation X. 1819, is, that imprisonment can only be awarded in commutation of fine. Board of Customs, Salt and Opium, 12th August 1845, .. .. II. 71
28. Objections to a coming sale in satisfaction of a decree, alleging possession on the part of the objector, must be enquired into before the sale can take place. Must. Hur Soondree Gooptea, 27th January 1846, .. II. 75
29. Illegal collections cannot be taken into account in the adjustment of mesne profits. Radha Mohun Ghose Chowdry, 10th February 1846, .. II. 75
30. The failure of the first purchaser, at a sale in execution of a decree, to make good the purchase money, does not relieve the original debtor from his liabilities. Baboo Beer Singh, 2d March 1846, .. .. II. 76
31. The accruing interest, the payment of which may be imposed under Construction 1010 on any claimant, whose objections are evidently collusive and litigious, or vexatious and unfounded, should be calculated upon the amount thereby affected, and not upon the whole amount of the decree. Rai Sree Kishen, 3d March 1846, .. .. II. 77
32. In the case of lands sold to satisfy a decree for rent due on their account, the decree holder has a preferable claim to the proceeds of sale. Bhowannee Pershad Rai, 1st September 1846, .. .. II. 81
33. A plaintiff having been nonsuited in an action for debt and made chargeable with costs, sues again and obtains a decree: in the meanwhile the defendant sells the decree in the nonsuit to a third party. Held that the sale, being evidently collusive, is no bar to the amount of costs due on the first decree being considered so far a set-off against the amount due on the second decree. Huris Chunder Bose, 27th October 1846, .. II. 86
34. Execution of a decree revived after adjustment, it being shewn that the terms of the adjustment had not been complied with by the debtor. Ram Subai Singh and others, 8th February 1847, .. .. II. 90
35. An adjustment between parties after judgment and execution sued out, held, under the circumstances, to supersede the judgment, and to bar the revival of execution, notwithstanding the alleged evasion by one of the

- parties of the terms of the adjustment. Rani Soorjmunnee Deebeca, 9th February 1847, .. .. II. 90
36. The interest with which a claimant may be charged under Construction 1010, should be recovered from him by the decree holder. Choonce Lal Sem, 10th March 1847, .. .. II. 92
37. A claim preferred only on day of sale, to a rateable share in assets realized by a sale of property, rejected under Circular Order No. 42, dated 26th January 1844. Anund Maye and others, 10th March 1847, .. II. 93
38. An order to stay the sale of property about to be sold by the collector in execution of a decree was transmitted by the civil court, but not received by the collector prior to its sale : held that the sale could not be set aside. Shumbonath Roy, 17th March 1847, .. .. II. 94
39. Execution of the decree of a civil court adjudging land to a party may be taken out, notwithstanding its resumption and assessment. Bhoo-bun Mye Debbea, 5th April 1847, .. .. II. 95
40. Under the Circular Order of the 26th January 1844, a suing out of attachment is essential to a decree holder being permitted to share in the proceeds of sale. It is competent to the courts to exercise a discretion in awarding costs of execution before distribution of assets. Ram Lol, 18th May 1847, .. .. II. 101
41. The civil courts have the power of issuing process simultaneously against the person and property of a debtor in execution of a decree of court. Syed Mehdee Ali, 5th July 1847, .. .. II. 106
42. Where costs have not been awarded in the decretal order, the civil court cannot order execution for costs without first correcting the decree on the application of the decree holder. Bibi Takee Sherah, 5th July 1847, II. 107
43. In the execution of a decree, its terms, when specific, and not those of the documents on which it is founded, are to regulate the course of execution. Hamid Russool, 26th July 1847, .. .. II. 113
44. Property situated in a cantonment cannot be transferred contrary to the rules in force within such cantonment. D. S. Cohen, 9th August 1847, .. .. II. 115
45. A judge having granted permission to a decree holder, intending to purchase the property of his judgment debtor, to file his receipt instead of paying the purchase money, is competent to withdraw such permission under altered circumstances, shewn by the application of a party holding a decree against such decree holder. Musst. Wuzceer-o-missa, 10th January 1848, .. .. II.
46. The application of the holder of a decree, against several judgment debtors, to divide their liabilities according to shares being rejected, does not preclude execution being taken out against them all jointly and severally. Sahleh Khatoon and another, 18th January 1848, .. .. II.
47. Objections to a sale in execution of a decree, founded on its having been previously satisfied, cannot be heard after such sale when held after due notice. Sreemuttee Dasse, 20th January 1848, .. .. II.
48. Balance of rent for antecedent years due from a *putnee talook* being of the nature of personal debts of the *talookdar*, the *talook* itself is not primarily answerable for them. James Furlong, 31st January 1848, .. II.
49. In deciding upon claims to property attached in execution of decrees of court, it is competent to the civil courts to determine whether an award under Act IV. 1840, adduced in proof of possession, be a decision in a *bond fide* or fictitious case. Maharajah Dheeraj Rajah Muhtab Chunder Bahadur, 31st January 1848, .. .. II.
50. Counter claims to proceeds of a sale held in execution of a decree, founded on purchase of the rights of the original decree holders, cannot be determined summarily. Ranchunder Fotedar and others, 3d February 1848, .. .. II.

51. The provisions of Regulation III. of 1818, are applicable only to state prisoners. Baboo Teelukdarree Singh, 22d February 1848, .. II.

52. Execution of a zillah decree stayed by the Sudder Dewanny Adawlut, in consequence of the lands forming the subject of litigation being undefined in the plaint, and equally so in the decree. Ooman Dutt and another, 28th March 1848,

53. A disputed title on special grounds, cannot summarily avail against the general right of heirship. Shufant Oollah, 5th June 1848, .. II.

54. Claims to property sold in satisfaction of a decree, if not advanced before the sale, cannot be entertained summarily merely because preferred within one month after it. Motee Lal, 12th June 1848, .. .. II.

55. The boundaries mentioned in a decree, and not the exact quantity by subsequent measurement, indicate the identity of the lands of which possession is to be given to a decree holder. Mohunt Nuraam Doss, 19th June 1848, .. .. II.

See 'Arrest,' No. 1.

'Attachment,' No. 3.

'Cause of Action,' No. 1.

'Compromise,' No. 1.

'Costs,' No. 1.

'Deposit.'

'Dispossession,' No. 1.

'Embankment,' No. 1.

'Haunts,' No. 1.

'Insolvent Court,' No. 1.

'Interest,' No. 1.

'Jurisdiction,' No. 2.

'Liability,' No. 1.

'Limitation of Time,' No. 1.

'Pension,' No. 1.

'Practice,' Nos. 13, 14, 19, 21, 24.

'Security,' Nos. 4, 8.

'Surety,' No. 1.

## EXPARTE.

See 'Appeal,' No. 2.

'Practice,' No. 30.

## FARM.

1. A farmer cannot be ousted during the period of his engagement by a party who has obtained a decree against his lessor, merely on the ground of such decree. See Construction 540. Kishen Dyal Singh, 26th April 1841, II. 8

## FICTITIOUS PURCHASE.

See 'Cause of Action,' No. 1.

## FINE.

1. It is not competent to a zillah judge to impose a fine under the provisions of Section 3, Regulation XIII. 1796, on the appellant in a miscellaneous case. See Construction 1138. Ramchunder Sahoo, 5th July 1842, II. 33

2. Government cannot recover a fine under Section 11, Regulation XXVII. 1793, from parties making illegal collections, until they have been

successfully prosecuted by those aggrieved. The application of Government in such a case should be on a stamp of 8 annas, as for a miscellaneous petition. Government, 3th April 1847, .. .. II. 95

See 'Execution of Decree,' No. 27.

'Practice,' No. 20.

'Review,' No. 11.

## FORECLOSURE.

See 'Practice,' No. 11.

## FORGERY.

See 'Appeal,' No. 11.

'Jurisdiction,' No. 4.

## GOVERNMENT, SUITS AGAINST.

See 'Default,' No. 2.

## GUARDIAN.

1. Section 26, Regulation V. 1812, declaratory of the competency of the zillah judge to interfere in cases of disputes between proprietors of joint undivided estates for the due discharge of the public revenue, held by the Sudder Dewanny Adawlut to be decidedly inapplicable to the removal of executors and guardians in possession of property under the provisions of Regulation V. of 1799. Petrusse Necose Pogose, 4th April 1835, .. I. 7

2. The Sudder Dewanny Adawlut will not interfere summarily to put a guardian in possession of the papers and accounts of property to which the right of his ward is contested. Mirtinjai Bose, 13th April 1837, .. I. 11

3. A guardian cannot be appointed under Regulation I. 1800, to an alleged adopted minor, whose adoption is disputed. This however does not prevent an action by his friend to establish the minor's right. Sheeb Chunder Ker, 17th July 1847, .. .. II. 108

4. The alleged guardianship of a minor, if disputed by another claimant to the office, should be enquired into before passing judgment in a case in which such minor and his guardian may be concerned. Chunder Madhub Chuckerbutty, 22d March 1848, .. .. II.

See 'Liability,' No. 1.

'Pauper,' No. 6.

'Practice,' Nos. 7, 9, 29.

## HAUTS.

1. The summary prohibition by the zillah judge to establish a *haut*, because it interfered with a neighbouring *haut*, overruled by the Sudder Dewanny Adawlut. Dhun Kan, 22nd July 1840, .. .. I. 46

## ILLEGAL COLLECTIONS.

See 'Execution of Decree,' No. 29.

'Fine,' No. 2.

## INSOLVENT COURT.

1. A zillah court cannot sell, in execution of its own judgment, property in the possession of an assignee appointed by the Insolvent Court in Calcutta. *Mirza Hossein*, 4th April 1836, .. .. I. 10

## INSOLVENT.

1. A debtor confined in the jail of 24-Pergunnahs, in execution of a decree of the Court of Requests, is entitled to the benefit of the rules of Section 11, Regulation II. 1806, in favor of insolvents. *Lukheernarain Pal*, 18th September 1837, .. .. I. 15
  2. A person not in confinement for the satisfaction of a decree of a civil court, cannot obtain the benefit of the rule regarding insolvents in Section 11, Regulation II. 1806. *Khwaja Akram Necose Pogose*, 18th May 1837, .. .. I. 20
  3. It is an insufficient reason for the discharge of a debtor from confinement without taking his oath of insolvency, that the creditor cannot point out any property belonging to him. *Rajah Muheshwur Buksh Singh*, 2nd September 1844, .. .. II. 60
- See 'Arrest,' Nos. 3, 4.  
'Security,' No. 6.

## INTEREST.

1. The highest legal rate of interest awarded, under the circumstances, from the date of the decree to the date of payment, notwithstanding that the bond on which the decree was founded specified a lower rate of interest. *Dukhna Dossea*, 2nd June 1835, .. .. I. 8
- See 'Costs of Suit,' No. 2.  
'Execution of Decree,' Nos. 31, 36.  
'Mesne Profits,' No. 1.  
'Practice,' No. 31.

## INTERLOCUTORY ORDER.

See 'Appeal,' No. 1.

## INTESTATE.

1. A demand for security, before giving possession of the property of an intestate to his proved heir, and in the absence of other claims, is not warranted by the provisions of Section 7, Regulation V., 1799. *Mudhoobun Doss*, 14th December 1846, .. .. II. 88

## \* JAGHIRE.

See 'Security,' No. 1.

## JOINT UNDIVIDED ESTATES.

1. Held that the civil courts cannot give orders with regard to the estates directed under Section 26, Regulation V. 1812, to be held in attachment by the revenue authorities under Regulation V. 1827. *Joy Gopal Pal Chowdhry*, 16th March 1847, .. .. II. 93
2. Arrangements made by the proprietors of an estate after its attachment according to Section 26, Regulation V. 1812, and Regulation V. 1827, are not binding upon the revenue authorities. *James Coell*, 1st February 1848, .. .. II. 129

## JURISDICTION.

1. A principal sudder ameen gavé judgment in a case in which he had no jurisdiction. On application to the Sudder Dewanny Adawlut, the Court held that the irregular decree could not be set aside on a mere summary application. Piddington, 24th May 1842, .. .. II. 21
  2. Held by the Calcutta and Western Courts collectively, that the Circular Order of the 8th May 1840, (pointing out the authority by which claims to property advertized for sale in execution of a decree passed by the court of a district, other than that in which the property is situated, are to be investigated,) applies to movable as well as immovable property. Gunga Persaud Ghose, 13th September 1842, .. .. II. 38
  3. A civil court cannot, notwithstanding the institution of a suit for it, summarily interfere to stay the sale by a collector of property pledged as security in the revenue department. Gour Mohun Doss, 14th July 1846, II. 81
  4. The civil courts cannot interfere to stay the proceedings in the criminal court, in the prosecution of a case of forgery at the instance of the collector. Neelmunnee Dutt, 19th November 1846, .. .. II. 87
  5. A having borrowed money in one district, dies without leaving any property in the district in which he borrowed, and is succeeded by heirs resident in another district: held that the heirs may be sued either in the *locus contractus*, or in that of their domicile. Kali Tara Mijmoodar, 1st June 1847, .. .. II. 103
  6. Suits for profits or rent of lands should be instituted in the zillah where the land is situated, rather than in that where the defendants reside. Gopee Kunt Misr, 19th February 1848, .. .. II. 132
  7. A suit for reversal of a sale of real property made in execution of a decree of court, must be instituted in the district in which the property is situated. Boodhai Singh, 7th March 1848, .. .. II. 135
  8. If land be claimed by the parties to a suit as appertaining to their respective districts, reference should be made to the Sudder Dewanny Adawlut to decide in which the trial is to be held. Raee Hurree Kishen and others, 18th July 1848, .. .. II. 143
  9. A principal sudder ameen is not debarred from trying a suit, because a deed filed in it had been attested by him as *cazee*, Gosaicen Bhunjun Geer, 30th December 1848, .. .. II. 148
- See 'Review of Judgment,' No. 5.  
 'Execution of Decree,' Nos. 12, 16.  
 'Action,' No. 1.  
 'Pleader,' No. 4.

## LAKHIRAJ TENURE.

1. Held by the Sudder Dewanny Adawlut, under the circumstances set forth, that a stipend payable under judgment of court from the proceeds of land held under *lakhiraj* tenure, necessarily ceases on the resumption of the tenure by the Government. Ramchunder Baboo, 20th June 1842, .. II. 32

## LIABILITY.

1. A guardian having borrowed money to save his ward's estate from sale for arrears of revenue, held that such estate is liable to be attached and sold in execution of a decree obtained against the guardian for payment of the debt. Juggernath Sookul, 10th May 1838, .. .. I. 15

2. Held on the opinion of the law officer of the Sudder Dewanny Adawlut, that an heir of a deceased Mahomedan is not liable to pay the debts of his father, save *pro tanto* assets to which he may have avowedly succeeded. Musst. Pootee Begum, 17th June 1840, .. .. . I. 34  
See 'Practice,' Nos. 14, 28.

### LIMITATION OF TIME.

1. The orders of the zillah court rejecting the summary application of the petitioners to execute their decree, sixteen years after date thereof, affirmed on appeal by the Sudder Dewanny Adawlut. Sheikh Hosam Buksh and others, 9th April 1839, .. .. . I. 19
2. An application for permission to sue *in forma pauperis* to set aside a summary decree for rent passed prior to the enactment of Regulation VIII. 1831, rejected in consequence of the application not having been preferred within one year from the date of the promulgation of that Regulation. Kishen Kauti Hijra, 5th October 1841, .. .. . II. 18
3. The zillah court having been closed the last day allowed by the law for application to enforce an award of arbitration, the Sudder Dewanny Adawlut held that the applicant, in presenting his application on the next first court day, was in time. Issur Chunder Pal Chowdree, 10th May 1842, .. II. 31  
See 'Review,' No. 1.

### MAJORITY.

1. The age of 21 was held as the period of the petitioner (a Christian) attaining his majority, with reference to the provisions of a will, under which he claimed the personal management of property bequeathed to him. John Smithson Brown, 14th April 1842, .. .. . II. 27

### MESNE PROFITS.

1. A sale of real property (made in execution of a decree) being cancelled, the court may, by a summary order, award recovery of mesne profits, accruing during possession held by the auction purchaser, and interest thereupon from the date of the proceeding fixing the amount of profits. Musst. Raufoomissa, 13th March 1841, .. .. . II. 3
2. In an action for recovery of mesne profits, held that the plaintiff was rightly nonsuited for omitting to state the amount, and the period for which it was alleged to be recoverable. Adheen Singh and others, 25th July 1842, .. .. . II. 35
3. Mesne profits cannot be awarded at a higher rate than that specifically claimed by the plaintiff in the court of first instance. Bykunt Nath Rae, 14th August 1848, .. .. . II. 116

### MINISTERIAL OFFICER.

1. There is no appeal to the Sudder Dewanny Adawlut from the order of a zillah judge dismissing a ministerial officer attached to the court of a moonsiff. Nilmadub Sircar, 23d August 1842. (Superseded by C. O. 21st March 1848,) .. .. . II. 38

### MINOR.

See 'Guardian,' No. 3.



## MOOKHTARS.

1. Constructions 607 and 809, regarding *mookhtars*, are inapplicable to the civil courts. Bishen Dyal Singh, 12th August 1848, .. .. II.  
See 'Power,' No. 1.  
'Wukeels,' No. 2.

## MORTGAGE.

1. It is not competent to a zillah judge to pass an order summarily for foreclosure of a mortgage, notwithstanding the vendor and vendee might certify to him an agreement to the effect that the conditional sale should be made absolute, without the necessity of further proceedings, in the event of a violation of the agreement by the vendor. Chundee Churn Mujmoodar, 28th June 1841, .. .. II. 12
2. The time of notice of foreclosure of a mortgage, prescribed by Section 8, Regulation XVII. 1806, having expired on a Sunday, the Sudder Dewanny Adawlut held that a tender of the debt, on the day following, as a deposit in court, should have been allowed. Fuzl-oo-nissa, 15th July 1841, .. .. II. 15  
See 'Security,' No. 4.  
'Practice,' No. 11.

## MAHOMEDAN TOMBS.

- See 'Execution of Decree,' No. 20.

## NAZIR.

- See 'Practice,' No. 8.  
'Execution of Decree,' No. 4.

## NONSUIT.

1. The return of any portion of the stamp required for the plaint, in a case in which order of nonsuit has been passed, is unauthorized. Kashee Kant Aecharge, 24th May 1842, .. .. II. 31
2. Omission to include the whole of a claim in one plaint does not necessarily subject the plaintiff to be nonsuited. Bholanath Baboo, 20th June 1842, .. .. II. 33
3. A plaintiff was nonsuited for making a deceased person a co-defendant. Panchaun Raice, 24th March 1846, .. .. II. 80
4. The omission to specify by name one of the defendants in a civil suit, who was otherwise adequately described, was held to be an insufficient ground of nonsuit. Bhugwuttee Dassea, 18th August 1846, .. .. II. 82  
See 'Champerly,'  
'Mesne Profits,' No. 2.  
'Practice,' Nos. 26, 39.  
'Stamp,' Nos. 4, 5.  
'Summary Appeals,' No. 1.  
'Valuation of Suits,' No. 3.

## NOTICE.

- See 'Practice,' Nos. 112, 37, 38, 40.

PARTITION.

See 'Attachment,' No. 10.  
'Collector,' No. 1.

PAUPER.

1. Held that a zillah court is bound, before admitting a party to sue *in formâ pauperis*, to hear the objections which may be urged by the opposite party. Edmund Kent Hume, 21st November 1834, . . . I. 2
2. The Sudder Dewanny Adawlut refused an application to appeal *in formâ pauperis*, preferred by a party who would not defend in the lower court. Ittur Khan and another, 13th April 1842, . . . II. 27
3. An order passed by the zillah judge under Clause 3, Section 12, Regulation XXVIII. 1814, refusing permission to a party to appeal *in formâ pauperis*, is final, and not open to appeal to the Sudder Dewanny Adawlut. Bejnath, 13th June 1842, . . . II. 32
4. The petitioner, who was a convict in jail undergoing a criminal sentence, was permitted to appeal *in formâ pauperis*, under the provisions of Act XIX. of 1840, without personally attending. Syud Abdool Hafeez, 30th May 1842, . . . II. 32
5. It is not necessary to strike off the suit of a pauper plaintiff on his death: his heir, on proof of pauperism, may be permitted to carry on the suit. Syud Mowla Buxsh, 10th April 1843, . . . II. 47
6. The possession of property by a guardian is no bar to the admission of a suit *in formâ pauperis* on behalf of his ward. Musst. Afzul Sultan, 11th September 1843, . . . II. 52
7. If lapse of time, not amounting to a period which would bar the institution of a suit on a full stamp, be the only ground for rejecting an application to sue *in formâ pauperis* it is insufficient. Jugmohun Manjee, 22d April 1844, . . . II. 58
8. The possession of property by the husband is no bar to the admission of a suit *in formâ pauperis* on the part of the wife. Ladoonissa Begum and another, 15th December 1845, . . . II. 73
9. The zillah judge is alone competent to admit a supplemental plaint to be filed by a pauper plaintiff. Hur Chunder Lalooor, 25th August 1846, II. 83
10. The possession of property by the father is no bar to the admission of a suit *in formâ pauperis* on the part of a son against his father. Chuttoo Ram Tewarce, 7th September 1846, . . . II. 85
11. An application to sue *in formâ pauperis* rejected, in consequence of contradictory statements made by the applicant, in regard to a point involved in the determination of the question as to whether there was probable cause for instituting the suit, Section I, Act IX. 1839. Nowshere Ali Khan, 11th January 1847, . . . II. 89
12. Applications on the part of Government to recover the stamp duties incurred in pauper suits, may be made on plain paper. Government, 30th January 1847, . . . II. 89
13. Held that the alleged heir by will, of a deceased pauper plaintiff, must apply *de novo* for permission to sue as a pauper. Alee Ahsun, 1st March 1847, . . . II. 91
14. A male native of rank, wishing to institute a suit *in formâ pauperis*, must appear in person for examination under Clauses 1 and 3, Section 5, Regulation XXVIII. 1814, and cannot be examined *through* his agent. Syed Mehdee Ali Khan and others, 19th July 1847, . . . II. 112
15. A pauper plaintiff cannot be allowed to add to the number of the defendants originally sued by him, without their being permitted to

- shew cause against his right to sue as a pauper. Hurchunder Lahoree,  
 26th July 1847, .. .. II. 112  
 See 'Limitation,' No. 2.  
 'Appeal,' No. 7.

## PERJURY.

- See 'Appeal,' No. 11.

## PLEADER.

1. A civil court cannot compel a pleader to receive a *wukalutnamah* from a party not a pauper. Balnath Sahoo, 1st August 1842, .. II. 35
  2. The absence on leave of a pleader engaged in a cause, is no bar to its dismissal under Section 1, Act XXIX. 1841. Oma Kant Goh, 2d August 1842, .. II. 36
  3. A pleader entrusted with the secrets of a cause by his client, is not bound to give evidence of any information given to him in confidence, in virtue of such trust. Madhobee Dassea, 4th July 1843, .. II. 51
  4. The conduct of a *wukeel* engaged in a case before a principal sudder ameen, even exceeding 5,000 rupees in value, is cognizable by the zillah judge, and not by the Sudder Dewanny Adawlut. Sheik Usudoollah, 28th May 1844, .. II. 58
  5. A pleader cannot be required to exhibit the instructions of his client. Rajkishen Surma, 16th September 1846, .. II. 86
- See 'Practice,' No. 27.  
 'Wukeels' Fees.'

## PLEADINGS.

1. A civil court cannot, *motu suo*, order supplemental pleadings to be filed: they are admissible only on the application of the party seeking to rectify his error. Brijnath Sein, 21st September 1847, .. II. 119
2. The error of making a deceased person a defendant, can be corrected on the motion of the plaintiff. Beepur Das and others, 21st September 1847, II. 119

## PENSION.

1. Held that a pension granted by Government is not liable to be attached in satisfaction of a decree of court, and is payable only to the party to whom the Government may have assigned it. Seeraj-o-nissa Khanum, 6th April 1839, .. I. 19
- See 'Security,' No. 1.  
 'Lakkhiraj,' No. 1.

## POWER.

1. A power of attorney executed in England was, under the circumstances, held to have been sufficiently attested by the affidavits of persons acquainted with the handwriting of the party executing. G. W. Rose, 15th February 1847, .. II. 91

## PRACTICE.

1. A son born after decree made, cannot summarily get possession of property adjudged to his brothers and cousins, who were parties thereto, notwithstanding the opinion of the *pundit* that such after-born son had

equality of right of brothers in the ancestral estate of his maternal uncle; but this was held by the Sudder Dewanny Adawlut not to narrow his remedy by legal recourse to the institution of a regular suit. Bejoy Govind Burrall and others, 30th December 1834, . . . . . I. 3

2. In an action for the recovery of property attached by an *ameen* appointed by the collector, under instructions from the civil court, the plaintiff in making the collector a party to the suit would be liable to a nonsuit under the provisions of Section 38, Regulation XI. of 1822. Rajah Raj Gungadhur, 5th February 1835, . . . . . I. 6

3. Six different actions having been instituted, for as many villages, to set aside a single deed of conveyance of the whole, and having been decided together by the courts of original jurisdiction and first appeal, the Sudder Dewanny Adawlut, under the circumstances, allowed the cases to be consolidated, and admitted one special appeal from the six decrees. Russick Lal Dutt, 3d June 1835, . . . . . I. 8

4. An objection made to the representation, by the legal heirs of a plaintiff who died *pendente lite*, on the ground of a special legal disability, overruled, and the objector referred to a regular action. Punchann Roy, 26th June 1835, . . . . . I. 9

5. Held that a zillah judge was not warranted in refusing payment of money, in consequence of objections urged to such payment, in the form of a letter addressed to him by an attorney of the Supreme Court. Petrusse Nicholas Pogose, 4th June 1836, . . . . . I. 10

6. Held that on applications by three distinct parties to represent a deceased decree holder, (one as the legal heir, and the others on special pleas,) the zillah court should have recognized the legal heir, leaving the other claimants to resort to regular actions for the establishment of their respective claims. Pirmonnee Debbea and another, 27th September 1836, I. 12

7. A decree for damages against A, who alleged himself to be the guardian of B and C, held by the Sudder Dewanny Adawlut to be personal, and not to confer on A any exemption from liability, nor subject the estate of B and C to be sold in execution thereof. Bhrab Chunder Bose *versus* Joseph Nicholson Thomas and another, 29th January 1839, . . . . . I. 16

8. Held by the Sudder Dewanny Adawlut that the regulations in force do not provide any summary remedy against losses sustained in appeal cases, from the insufficiency of security pronounced by the *nazir* of a civil court to be good and sufficient for the performance of final judgment; but that the injured party can only have his remedy by the institution of a regular suit under the provisions of Regulation IV. of 1793. Lal Mohun Bose, 2d July 1839, . . . . . I. 21

9. Held that the Sudder Dewanny Adawlut have the power of summarily interfering, to the extent of directing the appointment of a co-guardian and manager to act conjointly with the guardian and manager of a minor's estate under Regulation V. of 1799, when such guardian and manager may be disqualified for the proper management of the estate. George Joseph Jordan, 22d June 1840, . . . . . I. 44

10. Held by the Sudder Dewanny Adawlut, that before an order of dismissal on default is pronounced by the lower court in consequence of the non-attendance of witnesses, it is the duty of the zillah judge to satisfy himself by evidence on oath, that the absent witnesses are material to the cause. Durjyah Dhan Saha and another, 11th August 1840, . . . . . I. 47

11. The production of the original deed of mortgage, prior to the issue of notice of foreclosure under Section 8, Regulation XVII. 1806, is not necessary. Baboo Gopal Lal Thakoor, 8th September 1840, . . . . . I. 47

12. The Rajah of Burdwan having failed to attend to a notice of court, on the ground that the usual mode of service by letter was not followed, the

Sudder Dewanny Adawlut held that he was bound to attend to it, stating at the same time his objections to the mode of service. Maharajah Mehtab Chund, 29th December 1840, .. .. . I. 51

13. In the case of a joint decree, without specification of the sums payable to each of the plaintiffs, payment of the portions of the other decree holders by one of them who has realized the whole amount, cannot be summarily enforced. Ram Suhai Bajpai, 22d March 1841, .. II. 4

14. The joint surety of a farmer against whom, with his joint sureties, a decree had been given for arrears of rent, cannot be absolved from liability on payment of half the amount; the principal and each of the sureties being severally liable for the full amount of the decree, until it has been completely satisfied. Puddum Loehun Mullick, 6th April 1841, .. II. 5

15. The Sudder Dewanny Adawlut directed the restoration to the file of the zillah judge of an appeal preferred jointly by two appellants, but struck off on the application of one of them. Nund Kisore Shaw, 20th April 1841, II. 8

16. One of the heirs of a judgment creditor having realized the amount of the decree, held that another heir cannot summarily recover his portion of the debt from the party to whom payment has been made: the remedy is by regular action. Petumber Chukerbutee, 11th May 1841, .. II. 9

17. An order of a zillah court dismissed the suit of the petitioner, who sued to recover property which had escheated to the Government on default of succession, because the petitioner did not appeal from a summary order rejecting his claim, over-ruled as against the practice of the courts. Bungsee Doss Udhekari, 31st May 1841, .. .. . II. 11

18. The lower court having given a decree for a sum less than the amount claimed, the defendant is at liberty to appeal, estimating his appeal at the amount awarded, instead of at that originally claimed. Lukhienaram Burrall, 14th June 1841, .. .. . II. 19

19. A debtor declared by a decree jointly responsible with others, cannot claim exemption from further liability on depositing what he considers to be his share of the debt. Heera Saho, 23d August 1841, .. .. . II. 15

20. Held that a judge is not authorized by Clause 3, Section 12, Regulation XXVI. 1814, to fine a defendant one-fourth of the value of the stamp required for the petition of plaint, for failing to produce certain documents, the recovery of which by the plaintiff formed the subject of action. The Rajah of Burdwan, 7th September 1841, .. .. . II. 17

21. The institution of a regular suit to set aside a sale of property sold in execution of a decree of court, is no sufficient reason for withholding possession of the property from the purchaser. Begunna Jau, 13th September 1841, .. .. . II. 17

22. In an action for damages, the defendant may appeal from the decree of the lower court to the amount of the sum awarded as damages, instead of at the amount of the damages laid by the plaintiff. Chundee Churn Mookerjee, 20th September 1841, .. .. . II. 18

23. An estate having been ordered for attachment by the civil court, under Section 26, Regulation V. 1812, and attached by the collector under Regulation V. 1827, it is incompetent to the court to interfere with its internal management. Nil Madhoo Surma Chowdhree, 10th January 1842, II. 22

24. In an appeal from the order of a zillah judge for release, on claim preferred, of property attached by the petitioner in execution of a decree, the Sudder Dewanny Adawlut rejected the application, the objections to the release not having been made in the zillah court. Rani Kummul Komari, 10th June 1842, .. .. . II. 22

25. Property claimed under separate deeds must be separately sued for; but any number of decree holders attaching the same property, may be sued in the same plaint by a party laying claim to it. Jhomari Beebee, 31st January 1842, .. .. . II. 23

26. In a suit for recovery of various portions of land from which the plaintiff alleged that he had been dispossessed at different times, but did not specify particulars, the Sudder Dewanny Adawlut held that he was rightly nonsuited. Syud Akbar Ali Khan, 14th March 1842, .. II. 25
27. The *wukeel* of a judgment creditor having applied on behalf of his client, praying that certain property belonging to his debtor might be publicly sold to him at a specified sum, if more was not bid for it, it was held by the Sudder Dewanny Adawlut that the client was bound by such an application, notwithstanding his subsequent declaration that he had not authorized his *wukeel* to make it. Shaik Burkat Hussein, 22d March 1842, .. II. 26
28. In a case of summary claim against the son for the payment of the debts of his deceased mother, against whom a decree had been given, the decree holder was, under the circumstances, referred to a regular suit to try the question of liability. Ram Chund Adhekaree, 18th April 1842, .. II. 29
29. A claim against a guardian appointed under Regulation I. of 1800, by his recent ward, cannot be summarily enforced. See Construction 720. Issen Kishen Acharge, 9th May 1842, .. II. 30
30. A case cannot be tried *ex parte*, when it is known that the usual notice has not been, and cannot be served on the defendant. See Construction 1343. R. Randolph, 7th November 1842, .. II. 40
31. A judgment creditor is entitled to interest on a sum of money realized by the sale of his debtor's property and deposited in court, but of which payment to the creditor is delayed in consequence of frivolous objections raised by the defendants. Chundernath Chatterjee, 27th December 1842, .. II. 42
32. A petition filed to correct an error as to the name of the heir of a defendant to a suit, cannot be considered as a supplementary plaint to which the provisions of Section 5, Regulation IV. 1793, are applicable. Bholanath Baboo, 8th January 1844, .. II. 55
33. The Sudder Dewanny Adawlut directed the restoration to the file of a moonsiff, of a suit for false imprisonment against a police darogah, struck off by order of the judge. Ram Gopal Ghose, 8th January 1844, .. II. 55
34. The Sudder Dewanny Adawlut ordered the refund of the value of a supplementary stamp which was filed by the plaintiff, after his suit had, as subsequently proved, been lost by default, and summarily altered the amount of *wukeels'* fees allowed by the lower court. Chintaman Awustee, 8th July 1844, .. II. 59
35. A plaintiff cannot be prevented from withdrawing his suit. Man Beebee and others, 10th December 1844, .. II. 62
36. Reasons preferred by a defendant for the dismissal of a regular suit, cannot be urged in a miscellaneous petition, but should be contained in the answer to the plaint. Rance Hurree Kishen, 3d February 1845, .. II. 63
37. Held that the eight days' notice required by Section 12, and the proceedings to be recorded under Section 10, Regulation XXVI. 1814, must be repeated, if the parties to a suit be allowed to file any pleadings subsequently to the above provisions of the law having been once already attended to. Gunsam Ram Dohah and others, 19th February 1845, .. II. 65
38. It is not necessary to issue to the new officer fresh notice in a case to which the receiver of the Supreme Court may be a party, on change of the official incumbent. Kalee Shunker Buxee and others, 18th March 1845, II. 66
39. The filing of a second supplementary plaint, although unauthorized by law, is no ground of nonsuit. Bishen Soonduree Diba, 21st April 1845, II. 67
40. The issue of notice to heirs of defendant or respondent, deceased, to attend, and not proof of their heirship, is required from the opposite party. Kummul Kishore Goh, 2d June 1845, .. II. 69
41. A party to an action cannot be called upon to point out the witnesses named by the opposite side. Bhoobun Mye Debecca Chowdryn, 22d September 1845, .. II. 71

42. The shareholders in two different estates being the same parties, one of their number liquidating the Government arrears due on both, may sue his defaulting co-sharers for the amount in one action. Juggut Chunder Mookoorjeea, 4th September 1847, .. .. II. 118

See 'Execution of Decree,' No. 15.

'Wukeels' Fees,' No. 1.

'Guardian,' No. 2.

'Fine,' No. 1.

'Jurisdiction,' No. 1.

'Nonsuit,' No. 2.

'Pauper,' Nos. 2, 3.

'Default,' No. 4.

'Dispossession,' No. 3.

'Mesne Profits,' No. 3.

### PRE-EMPTION.

1. The right of pre-emption (decreed on condition of payment in one month of the purchase money) lost by failure of payment within the time prescribed. Shah Ahmed Alli, 26th December 1840, .. I. 51

2. A party having claimed the right of pre-emption in certain lands and obtained a decree, is not at liberty to withdraw from his claim, in consequence of the resumption of the lands by Government, and the conclusion of a settlement with other parties. Sheikh Soopun, 4th May 1841, .. II. 9

### PRISONER'S SUBSISTENCE ALLOWANCE.

1. Held that a zillah judge was not authorized in reducing the subsistence allowance of a prisoner confined in the zillah jail, merely on the application of the creditor, and without sufficient cause being shewn. Kishenkishore Roy, 15th January 1841, .. .. II. 1

See 'Execution of Decree,' Nos. 9, 25.

### PROMISSORY NOTES.

See 'Attachment,' No. 5.

### PUTNEE TENURES.

1. Under the general powers vested in a collector by Section 22, Regulation IX. 1833, it is competent to him to reverse the sale of a *putnee* tenure by a deputy collector under Regulation VIII. 1819. Kamnee Kunth Chatterjee, 25th March 1848, .. .. II.

See 'Attachment,' Nos. 4, 7.

### RAJAH OF BURDWAN.

See 'Practice,' No. 12.

### REPLY.

See 'Default,' No. 3.

# RENTS.

See 'Summary Suits,' No. 1.

## REPRESENTATION.

1. A claim by adoption having been adjusted between the claimant and the heirs at law of the alleged adoptive father by a partition of the estate of the latter, such adoption not having been legally proved in court, held that on the death of the claimant, the heirs of the adoptive father should be admitted to represent the adopted party, in a suit instituted against him by another party, with reference to the property thus obtained, in preference to his own mother. *Radha Madhub Rae*, 21st January 1817, .. .. II. 105

## REVIEW.

1. Held that an application for a review of judgment is not cognizable by the court after the lapse of twelve years from the date of the final decision passed in the case. *Kasheenath Bonnerjee and others versus Brijmohun Mitter and others*, 25th May 1840, .. .. I. 31
2. Application for review of judgment, on grounds already decided upon by former judges of the *Sudder Dewanny Adawlut*, rejected. *Bunmallee Bhose versus Rajah Burdakunt Raee*, 10th February 1811, .. .. II. 3
3. It is not competent to the *Sudder Dewanny Adawlut* to direct a zillah judge to review his order passed in an appeal, regular or special, from the decision of the *sudder ameen*. *Oudun Singh*, 13th January 1811, .. .. II. 3
4. An appeal to the *Sudder Dewanny Adawlut* from the judgment of a lower court, which has been struck off in default, is no bar to such court applying for sanction to review its own judgment. *Bughwan Dutt Singh versus Mirza Ahmed Hussein*, 20th April 1811, .. .. II. 7
5. The order of a zillah judge refusing to allow a principal *sudder ameen* to review his judgment, is final. *Imrit Lal*, 23d June 1841, .. .. II. 12
6. A zillah judge having rejected an application for a rehearing of his own judgment in an appeal from the *sudder ameen*, held that the *Sudder Dewanny Adawlut* had no jurisdiction in the case. *Maddun Mohun Muymoodar*, 5th January 1842, .. .. II. 21
7. A summary appeal does not lie to the *Sudder Dewanny Adawlut* from the order of a zillah judge, rejecting an application for a review of his own judgment. *Mohummud Ewaz*, 13th January 1842, .. .. II. 22
8. An application for review of a summary order rejected, without enquiry into its merits, because, *first*, a copy of the order complained of had not been filed with the petition of review; and, *secondly*, because no reason was given for the delay in making the application. *Rajah Kishenchunder*, 18th April 1842, .. .. II. 28
9. To enable the *Sudder Dewanny Adawlut* to receive an application for a review of judgment on paper of the value prescribed for miscellaneous petitions, it should be filed complete within three months accompanied by all the necessary papers. *Rajah Rughonundun Singh*, 23d August 1842, .. .. II. 37
10. An application to review the order rejecting the admission of a special appeal, must be preferred within three months from the date of the order of rejection. *J. P. Wise*, 28th September 1842, .. .. II. 39
11. It is not competent to a zillah judge to impose a fine on a party applying for a rehearing of an order passed on a miscellaneous case. *Ram Kishore Surma*, 15th March 1843, .. .. II. 46

See 'Appeals,' No. 12.

'Special Appeal,' No. 3.



## RESUMPTION.

1. A party considering himself aggrieved by an order of the resumption courts, defining the boundaries of a resumed *mehal*, cannot apply to the civil courts for redress. Hur Gobind Ghose, 17th July 1847, .. II. 109  
See 'Execution of Decrees,' No. 39.

## RAZEENAMAH.

1. The Sudder Dewanny Adawlut refused to carry into execution a *razeenamah*, or deed of adjustment and compromise between the parties, no final decree having been passed, and the value of the stamp for the petition of appeal having been returned. Rajah Mitterjeet Sing *versus* Koor Heyt Narain Singh, 16th November 1840, .. .. I. 49

## SALES.

1. In sales of revenue lands made by collectors in execution of decrees of court, proclamation by beat of drum is not required. Hyat-un-nissa, 14th August 1839, .. .. I. 23
  2. Failure to deposit the peon's fees for serving notice of sale in execution of a decree, held not to affect the legality of the sale. Sheo Soondree Debea, 17th January 1843, .. .. II. 46
  3. An order by the commissioner of revenue for the annulment of a sale made by the collector in execution of a decree of court, after it had been confirmed by the civil court, held by the Sudder Dewanny Adawlut to be a nullity, and the zillah court directed to apply to the collector for the proceeds of the sale. Gopeenath Sein and another, 25th February 1843, .. II. 46
  4. Notice given to the civil court of a compromise, or payment of a debt due under a decree, if after the sale of the debtor's property in execution thereof, is no ground for the summary reversal of the sale. Gunga Pershad Dutt, 24th April 1843, .. .. II. 48
  5. A conditional sale and decree for foreclosure and possession, is no bar to the sale of property pledged as security to a civil court to stay execution of a decree under a bond of prior date. Mudoa Konwur, 25th April 1843, II. 48
  6. A bid for property about to be sold by the collector in execution of a decree, made to the civil court, and information thereof given to the collector, held to be insufficient to set aside the actual sale of the property by the collector for a lesser amount. Sudhoo Lal and others, 30th October 1843, .. .. II. 53
- See 'Attachment,' No. 6.  
 'Execution of Decrees,' Nos. 1, 2, 3, 6, 10, 11, 12, 13, 19, 22, 24, 28, 30, 33, 38, 47, 54.  
 'Jurisdiction,' Nos. 1, 2.  
 'Mesne Profits,' No. 1.  
 'Practice,' Nos. 21, 27.

## SALT KHILAREES.

1. Two despatches of salt, belonging to different merchants, and covered by separate *rowannahs*, having been weighed together and declared liable to confiscation by the salt officers and zillah judge, under the provisions of Sections 41 and 113, Regulation X. 1819, held by the Court of Sudder Dewanny Adawlut that the quantity belonging to each merchant ought to have been separately weighed, and the order for confiscation accordingly

reversed. The Court further held that the salt *darogah* having examined the despatches of salt, endorsed the *rowannahs*, and allowed them to pass his station, acted irregularly in subsequently stopping them. Ram Rana Beoparce, 27th January 1835, . . . I. 5

2. Held that an appeal from a judge's order under Section 27, Act XXIX. 1838, inflicting a fine on a landholder for permitting the manufacture of contraband salt on his estate, can be admitted only on *special grounds*. Ramanath Chatterjea, 13th July 1841, . . . II. 14

3. A zemindar does not relieve himself from liability to fine, under Section 27, Act XXIX. 1838, for the erection of illicit *khilarees* on his estate, by giving his estate in farm. Arratoon and others, 6th October 1841, . . . II. 19

4. The order of the zillah judge under Section 27, Act XXIX. 1838, imposing a fine on a landholder for omitting to give notice of the establishment of illicit salt works on his estate, cannot be contested by a regular action. Sreenath Mullic, 31st November 1842, . . . II. 41

5. It is not competent to a civil court to reduce the penalty prescribed by Section 27, Act XXIX. of 1838, to be levied from landholders and others for omitting to give notice of the establishment on their lands of illicit *khilarees*, or salt works. Superintendent of Salt Chowkees in Zillah Jessore, 6th December 1842, . . . II. 41

6. The penalty prescribed by Section 27, Act XXIX. 1838, in case of landholders neglecting to give information of the establishment of illicit salt *khilarees* on their estates, is personal, and cannot be levied from the heirs of the negligent party. Superintendent of Salt Chowkees of Zillah Jessore, 16th May 1843, . . . II. 49

7. If only one, or some of the sharers of an estate have been prosecuted by the salt officers under Section 27, Act XXIX. 1838, for neglecting to give information of illicit salt works on their estates, the judge should not originate any charge against the other sharers: each sharer, prosecuted by the salt officers, is liable, on conviction, to the full penalty prescribed. Rajah Rajnarain Ray, 18th July 1843, . . . II. 52

8. The Circular Order of a Board, imposing rules of practice upon its subordinates, beyond the requirements of law, cannot be pleaded in bar of a legal penalty. Nubkishen Fotedar, 17th March 1846, . . . II. 78

9. A conviction under Section 27, Act XXIX. 1838, is appealable to the Sudder Dewanny Adawlut only on special grounds, as prescribed by Section 32 of the Act. A conviction under the first named Section is not vitiated by the omission to hold the local investigation prescribed by Section 99, Regulation X. 1819. Bishennath Biswas, 11th May 1847, . . . II. 98

See 'Execution of Decrees,' No. 27.

## SECURITY.

1. There is no legal bar to the attachment under Regulation II. of 1806, of the profits of a *jaghire* to meet the eventual judgment in an action for debt. Lala Hurneerain, Mookteear, 5th November 1834, . . . I. 1

2. An attachment made under the provisions of Clause 1, Section 5, Regulation II. of 1806, previous to the expiration of the period fixed by the court for furnishing security, held to be illegal. Edmund Kent Hume, 21st November 1834, . . . I. 1

3. A reasonable time must also be allowed for procuring the requisite security under the provisions of Clause 1, Section 5, Regulation II. of 1806, before the property of the defendant can be legally attached. Edmund Kent Hume, . . . I. 3

4. Property pledged to satisfy an eventual judgment of a *mofussil* court was subsequently mortgaged to another party, sold by the sheriff of

Calcutta in execution of a judgment of the Supreme Court, and possession thereof given under judgment of a zillah court: held that the lien of the decree holder, to satisfy whose claim the property was originally given in pledge, is not thereby affected. *Gour Soondree Gosain*, 12th September 1836, .. .. I. 11

5. Under the provisions of Section 11, Regulation XIII. of 1808, the Sudder Dewanny Adawlut will direct a greater amount of security, equal to one year's produce of the adjudged property, to be entered into by the respondent, during an appeal to the King in Council, than what the zillah court had accepted as good and sufficient to answer the judgment. *Shums-on-nissa Khanum versus Rayjan Khanum*, 15th August 1839, .. I. 25

6. A debtor confined in consequence of inability to give security under Section 4, Regulation II. 1806, may after decree passed and before execution taken out, be admitted to the benefit of the insolvent rules. *Ram Sunder Banerjee*, 20th January 1840, .. .. I. 30

7. Sureties of a treasurer of a zillah court held to be responsible for defalcations and embezzlements made during the period they have guaranteed the faithful and honest administration of his office by the treasurer,—notwithstanding an acquittance from all liability granted by the zillah court. *Tarnee Purshad Nyarutna Bhuttacharjya*, 19th June 1840, .. I. 36

8. The order of a zillah judge releasing surety (who has given security for a defendant under Clause 1, Section 5, Regulation II. 1806,) from liability, on the dismissal of the suit in the court of original jurisdiction, does not prevent the execution against the same surety of a decree passed by an appellate court in reversal of the zillah court's judgment. *Ram Gopal Jewun*, 9th December 1840, .. .. I. 50

9. Security for the discharge of a trust, or for payment of a debt, given directly to the employer or creditor, is no bar to the demand of security under Regulation II. 1806. *Mr. John Calder*, 10th January 1843, .. II. 45

10. Process of arrest under Section 4, Regulation II. 1806, taken out against a person when within the jurisdiction of the court issuing it, may be served on him beyond it. *A. H. Arratoon*, 21st April 1845, .. II. 67

11. An answer filed by the *wukeel* of a defendant in a suit, himself absconding or not furnishing security under Regulation II. 1806, is not to be attended to. *A. H. Arratoon*, 5th May 1845, .. .. II. 68

12. If the existence of a will be disputed between the heirs of a party deceased, security may be demanded under Section 4, Regulation V. 1799. *Bamundass Mookurjee and others*, 3d July 1845, .. .. II. 69

13. It is illegal to issue a proclamation in bar of alienation of property *pendente lite* before requiring security from the defendant. *Gobind Pershad Khan and another*, 12th June 1848.

See 'Execution of Decree,' No. 4.

'Intestate,' No. 1.

'Practice,' Nos. 8, 14.

'Succession,' No. 4.

## SECURITY FOR COSTS.

1. If security for costs be demanded from an appellant by a court of appeal in its discretion under Act III. 1845, the reasons for the same should be recorded. *Gourmohun Shaw*, 17th November 1845, .. .. II. 72

## SET OFF.

See 'Execution of Decree,' No. 3.

## SPECIAL APPEAL.

1. A mere application for permission to lodge a special appeal in the Sudder Dewanny Adawlut, presented within three months from the date of the decree of the zillah courts, is not sufficient to bring the applicant within the time. Gour Sehah and others *versus* Hunooman Pursad, 13th July 1842, .. .. II. 34
2. Failure to state the grounds of appeal within the same period, without good cause for the neglect, subjects the application to be struck off the file. .. .. Ibid. II. 34
3. The rejection by the Sudder Dewanny Adawlut of an application for a special appeal against a decision of a lower court, does not bar a review of judgment by such court. Syud Kiramut Allee, 9th August 1847, .. II. 115
4. Application for a special appeal rejected notwithstanding the illegality of the judge's order appealed against, such illegality not affecting the final disposal of the case. Beer Nursing Mullick, 22d April 1848, .. II.
5. The summary decision of a lower appellate court on a question of fact, is not open to a special appeal. Mohunt Nuram Doss, 19th June 1848, II. See 'Summary Appeals,' No. 3.  
'Practice,' No. 3.

## STAMP.

1. Held by the Sudder Dewanny Adawlut that the *Sicra* rupee is to be taken at par with the Company's rupee, in estimating the amount of stamp duty leviable on actions instituted in the Company's courts, e. g., A laid his appeal in *Sicca* rupees 9,639 on a stamp of 250 rupees. B pleaded that the amount appealed from ought to have been reduced to Company's rupees 10,281, and a stamp of 350 used. Plea of B overruled. Nilmadub Ghose *versus* Kishtochunder Das, 18th May 1839, .. .. I. 20
  2. Decrees of the Supreme Court are admissible as evidence in the Sudder Dewanny Adawlut on plain paper. Petruse Necose Pogose and another, 9th April 1840, .. .. I. 30
  3. Held that the copy, kept for record in the courts in lieu of the original, of a general power of attorney to act in more than one court, should be written on plain paper. Mr. R. F. Smith, 12th February 1814, .. II. 56
  4. An action is not hable to nonsuit, from the difference between the value stated and the proper value of the property sued for affecting the stamp duty on the petition of plaint, unless the value be understated in the proportion of 10 per cent. Shama Soondree Dasse, 9th December 1845, II. 73
  5. It is no ground of nonsuit that the value of the property has been over-estimated. Gunga Sagur Sircar, 6th December 1845, .. II. 74
  6. The order of an officer of Government, filed by a Government pleader, is sufficient authority to him to plead a cause, and is admissible on plain paper. Salt Agent of 24-Pergunnahs, 14th July 1846, .. .. II. 81
- See 'Nonsuit,' No. 1.  
'Practice,' Nos. 18, 22, 34.  
'Pauper,' No. 12.  
'Fines,' No. 2.  
'Valuation of Suits,' No. 3.

## SUCCESSION.

1. Administration to the property of an intestate Mahomedan, without the limits of the jurisdiction of Her Majesty's Supreme Court, refused to

- the registrar of that Court by the Presidency Sudder Dewanny Adawlut. Theodore Dickens, 22d June 1840, .. .. I. 37
2. Right of succession cannot be decided in a summary manner, except under Acts XIX. and XX. of 1841, or when the heirs of deceased parties to suits are called upon to appear. Byjnath Bose, 22d April 1845, .. II. 67
3. The provisions of Sections 4 and 5, Regulation V. 1799, apply only to cases of disputed succession among heirs at law, and not to those of parties claiming upon special grounds. Rance Bhoobun Mye Debbeea, 29th May 1847, .. .. II. 102
4. Security cannot be demanded under Regulation V. of 1799, in cases of disputes between heirs of a party deceased, unless occurring immediately upon his death. Bhugwuttee Dasea, 14th August 1847, .. .. II. 116
- See 'Liability,' No. 1.  
 'Practice,' Nos. 1, 4, 6.  
 'Pauper,' No. 5.  
 'Security,' No. 12.  
 'Collection of Debts,' No. 1.

## SUMMARY APPEAL.

1. The Sudder Dewanny Adawlut will admit a summary appeal from an order of nonsuit. Jhomari Beebee, 21st January 1842, .. .. II. 23
2. A summary appeal will not lie from an order of a lower court, rejecting a claim on a regular suit, because of the documentary evidence of the plaintiff being invalid for want of the prescribed stamp: the appeal must be regular. Mr. John Calder, 11th April 1843, .. .. II. 47
3. A summary appeal from a judgment passed in appeal by the principal sudder ameen, lies to the Sudder Dewanny Adawlut, and not to the zillah judge. Khedun Thakoor and another, 21st June 1847, .. .. II. 105
4. An order by a principal sudder ameen *dismissing* a suit, *after hearing*, on the ground of want of jurisdiction, is not summarily appealable to the zillah judge under Section 4, Act IX., 1844. Rancee Bhoobun Mye Dibbea, 5th October 1847, .. .. II. 121
5. The order of a principal sudder ameen, rejecting, by an endorsement on the petition of plaint, an original suit, as not cognizable by him, in a case exceeding 5,000 rupees in value, is appealable to the zillah judge and not to the Sudder Dewanny Adawlut. Muharajah Chutturdharee Sahee Buhadur, 27th December 1847, .. .. II. 122
6. A summary appeal does not lie against the order of costs in a decree of a regular suit. Bhurrit Chunder Mujmoodar and others, 22d March 1848, II.
7. Objections by a third party to his lands being included by an order of court, in lands the subject of a suit between two other parties, should be preferred in a regular appeal from the final decree, and not summarily as from an interlocutory order. Ram Gopal Soorma and others, 24th April 1848, .. .. II.
8. A summary appeal does not lie from an order disallowing objections to the trial of a suit, on the ground that another suit had been instituted elsewhere for the same subject of action. Abhee Churn Mookerjee, 24th July 1848, .. .. II.
- See 'Jurisdiction,' No. 1.  
 'Review of Judgment,' No. 17.  
 'Valuation of Property,' No. 1.

## SUMMARY JURISDICTION.

See 'Practice,' Nos. 13, 16.

# SUMMARY DECREES.

1. Held by the Sudder Dewanny Adawlut that it is not competent to the lower courts to stay the execution of a summary decree under Regulation VII. 1799, pending the institution of a regular suit to set aside such decree. Juggut Chunder Bonnerjee and another *versus* Ishur Chunder Moostofee, . . . . . I. 26  
See 'Limitation,' No. 2.

# SUMMARY SUIT.

1. Application for permission to deposit in court rents which the proprietor of the land refuses to receive, rejected. Govind Chunder Ray, 16th April 1840, . . . . . I. 30  
See 'Collector,' No. 2.

# SUPREME COURT.

1. A will, probate of which has been granted by the Supreme Court, can only be set aside by the Supreme Court. Gowree Churn Mookerjee *versus* Obhoychurn Mookerjee, 16th January 1844, . . . . . II. 55
2. Letters of administration from the Supreme Court confer no title to summary aid from the zillah courts, in recovering property not in possession of the party represented, at the time of his decease. Mr. O'Dowda *versus* Pecaree Lal Mundul and others, 7th September 1844, . . . . . II. 61  
See 'Stamps,' No. 2.  
'Succession,' No. 1.

# SUPPLEMENTARY PLAINT.

- See 'Practice,' Nos. 32, 39.  
'Pleadings,' No. 1.  
'Pauper,' No. 9.

# SURETY.

1. A prisoner confined in jail in execution of a decree may be released, with consent of decree holder, on bail for his personal appearance; and the surety may be summarily proceeded against on failing to produce the party bailed. Ramnarain Mokerjee, 14th April 1842, . . . . . II. 27
2. In a case in which the principals, who had obtained an order for possession of property under Regulation V. 1799, made over such property temporarily to their sureties, it was held that the civil court could not summarily interfere in a dispute between the principals and sureties in regard to the proper discharge of the trust. Dwarka Doss, 1st June 1847, . . . . . II. 104  
See 'Practice,' No. 14.

# VAKEELS' FEES.

1. Held that if in a claim against several defendants holding separate interest, such separate interests be specified in the plaint, the defendants may deposit their *vakeels'* fees in proportion to their respective interests; but that if there be no such specification of interests, each defendant must deposit according to the amount of entire claim. Ranee Indrani, 22d June 1836, . . . . . I. 11

2. The remuneration of the special agent (*mokhtar*) of the opposite party, cannot be made payable by the losing party. Kishto Mohun Ray, 15th January 1840, .. I. 27
  3. With reference to Clause 6, Section 2, Regulation XII. 1833, it is not competent to a civil court summarily to order payment to the heir of a deceased *vakeel*, of the remuneration agreed by his client to be paid to him under Clause 5 of the same Section and Regulation. Junwar Doss, 5th December 1843, .. II. 53
- See 'Practice,' No. 34.

## VALUATION OF SUITS.

1. Held that a summary appeal will lie from an interlocutory order, passed in the course of a regular suit regarding the valuation of property sued for. Ram Dolal Lushkur, 19th April 1841, .. II. 6
2. The value of the principal, includes that of the subordinate right. Ram Ruttun Rai, 16th March 1846, .. II. 77
3. A plaintiff undervaluing property according to his own data must be nonsuited. D. H. Kearns, 2d October 1847, .. II. 120

## VILLAGE ACCOUNTS.

1. Sections 14 and 15, Regulation IX. 1833, cannot be pleaded in bar of a suit, until the Board of Revenue shall have, under Section 13, prescribed rules for filing village accounts. Dowlut Raee, 18th March 1848, II.

## WIDOW UNDER THE HINDOO LAW.

1. A question having arisen as to whether a minor Hindoo widow should reside in the house of her husband's family, or in that of her own father: the Sudder Dewanny Adawlut ruled, under the circumstances, that she should remain under the protection of her father. Kashce Chunder Mustofee, 28th January 1837, .. I. 13
- See 'Execution of Decree,' No. 8.

## WITNESSES.

1. A plea of disgrace attaching to personal attendance in court, urged by a party summoned to give evidence, held by the Sudder Dewanny Adawlut to be inadmissible. Musst. Inderjeet Koonwur, 2d May 1842, .. II. 30
  2. The Sudder Dewanny Adawlut, on cause being shewn, will direct a lower court to issue a commission to take the evidence of absent witnesses, as prescribed by Act VII. 1841. Muhammad Hussein, 7th November 1842, II. 40
  3. A foreign potentate cannot be called upon to give evidence in the Company's courts. The evidence of a native subject of rank should be taken by a commission under Act VII. of 1841. Sahib Pruhllad Sein *versus* Chuttooreah Kurmurdun Singh, 26th February 1844, .. II. 57
  4. The shewing of a subpoena to a witness while passing by on an elephant, held to be a personal and actual service. Tarnee Debbee, 3d November 1846, .. II. 87
- See 'Evidence,' No. 1.  
 'Pleader,' No. 1.  
 'Practice,' Nos. 10, 41.







